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MAY 16. 1794.

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INF. ANDREW HOUSTON, &c.

AGAINST  
SCOTT MONCRIEFF, &c.

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# INFORMATION

F O R

ANDREW HOUSTON of Jordanhill, JAMES MACDOWALL, Merchant in Glasgow, and JAMES GAMMILL, Merchant in Greenock, Partners of the Greenock Banking Company, Defenders;

AGAINST

Messrs SCOTT MONCRIEFF and DALE, Cashiers of the Royal Bank of Scotland at Glasgow, and WILLIAM SIMPSON, Cashier of the said Royal Bank at Edinburgh, Pursuers.

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MAY 16. 1794.

SCOTT MONCRIEFF, &c.  
AGAINST  
MR. ANDREW HOUSTON, &c.

# INFORMATION

FOR

ANDREW HOUSTON of Jordanhill, James Macdonald, Mr.  
Cham in Glasgow, and James Gammie, Merchant in  
Glasgow, Partners of the Glasgow Banking Company,  
Defenders;

AGAINST

Messrs Scott Moncrieff and Dale, Clerks of the Royal  
Bank of Scotland at Glasgow, and William Simpson,  
Clerk of the said Royal Bank at Edinburgh, Pursuers.



MAY 16. 1794.

**MR. ANDREW HOUSTON, &c.** of Glasgow, who was a partner of the Company, had for several years acted as an agent at Glasgow, partner in the exchanges of their notes with the Bank there, and was now affected by the Royal Bank, that he had taken the said cash-account for the Company; and that  
**Ja. Gibson, W. S. Agent.**

**M. Clerk.**  
[**LORD HENDERLAND Reporter.**]

# INFORMATION

**FOR**  
**ANDREW HOUSTON** of Jordanhill, **JAMES MACDOWALL**, Merchant in Glasgow, and **JAMES GAMMILL**, Merchant in Greenock, Partners of the Greenock Banking Company, **Defenders;**

**AGAINST**  
**Messrs SCOTT MONCRIEFF and DALE**, Cashiers of the Royal Bank of Scotland at Glasgow, and **WILLIAM SIMPSON**, Cashier of the said Royal Bank at Edinburgh, **Pursuers.**

**JAMES DUNLOP** of Garnkirk, merchant in Glasgow, stopped payment on the 21st of March 1793, at which period there appeared to be a balance of upwards of L. 9100 due upon a cash-account, which he had obtained from the Royal Bank branch at Glasgow not quite three months before.

On the 20th of March, the day before this failure, and probably from an apprehension of such an event, the cashiers of the Royal Bank had intimated to Mr Dunlop, that his account was discontinued from that day, and required him to pay up

the



the balance. But on the 22d of March, the day after the failure, when Mr Dunlop appeared to be irretrievably ruined, they intimated to the Greenock Banking Company, that there was such a cash-account, and that they held them to be liable for the balance.

Mr Dunlop, who was a partner of the Company, had for several years acted as an agent at Glasgow, particularly in managing the exchanges of their notes with the Banks there, and it is now alleged by the Royal Bank, that he had taken the said cash-account for the behoof of the Greenock Banking Company; that he had authority to bind the Company; and that by letters which had passed betwixt him and Messrs Scott Moncrieff and Dale, the cashiers for the Royal Bank at Glasgow, the Greenock Banking Company were effectually bound to pay whatever balance might arise upon the cash-account.

The Company considering it to be clearly a private transaction of Mr Dunlop's, for which they were nowise liable, of course refused to pay the said balance, or in any shape to acknowledge it as a debt due by them. Some distressing measures of a private nature were then taken against them, with a view apparently to constrain them to comply. But these not having the effect which was expected, and the defenders remaining firm in their refusal, which they considered to be founded in clear justice, an action was brought against them in this Court, concluding for payment of L. 9183. 6. 11, as the balance of the said cash-account, with the interest due thereon since 25th March 1793.

After some procedure in this action, the particulars of which will be stated in the sequel, the Lord Henderland Ordinary has taken the cause to report, and appointed informations to be given in; in obedience to which appointment, this paper is submitted on the part of the defenders. And they humbly propose, *first*, to lay before your Lordships such a full and distinct state of facts as may convey complete information of every thing in point of fact that can be thought in any degree to affect the merits of the question; and *then* humbly to offer what occurs in point of argument, for supporting their own defence, or obviating the pleas and arguments that have been insisted on for the pursuers.

Statement of  
Facts.

The Greenock Banking Company was first established in June 1785, and then consisted of four partners, viz. James Dunlop, Andrew Houston, James Macdowall, and James Gammill, united under the firm of Dunlop, Houston, Gammill and Company.



A regular contract of copartnery was entered into, by the 6th article of which, 'it is expressly agreed, that this firm shall be made use of by none of the partners, but only by the cashiers for the time being, and for no other purpose whatever but the business of the Bank; and should it be made use by the cashier for any other purpose, or by any of the partners, such transaction shall be nowise binding upon the Company.' And by the 15th article, Mr Gammill, who resides at Greenock, was constituted the acting partner in the following terms: 'James Gammill shall give as much of his time as he thinks he can spare with conveniency, in superintending, advising and directing the cashier as to his operations.'

Soon after the Greenock Bank was established, it became necessary to have an agent at Glasgow, for exchanging their notes with the Banks, and transacting other business to be done in that place; and Mr Dunlop having undertaken this agency, found it so beneficial and convenient for him, by the command of money which it afforded him, that he continued to act as the agent for the Greenock Bank at Glasgow, from 1785 till his failure in 1793.

In place, however, of having more extensive powers than the agents usually employed by Banks, he in fact acted in a much more limited capacity than the agents which Banks or Banking Companies are in use to appoint in different places. He never received deposits of money upon promissory notes, nor had he any power to do so, and he could not have bound the Bank by his note to the extent of L. 20. He had no power to draw upon the accounts which the Bank kept with their correspondents in Edinburgh and London, and on occasions, when he found it convenient to draw upon the Bank's account with Sir William Forbes and Company, their agents at Edinburgh, it was necessary to apply for special leave; and the Bank's cashier at Greenock wrote to Sir William Forbes and Company, authorising them to honour the draught, and place it to the debit of the Bank's account, which otherwise would not have been done. The last time that Mr Dunlop asked and obtained liberty to make a draught of this kind was in 1788. In May 1789, he asked liberty to make a single draught upon the Company's account with Sir William Forbes and Company, but the liberty was refused. See his letter of 23d May 1789, and Mr Gammill's answer of 25th May, and he never after made any similar application.

Exhib. p. 5.  
C & H.

He



He never gave any cash-accounts or credits as agent for the Greenock Bank, and he but very rarely discounted bills for the Bank's account, though this is the most common business of a Bank agent. The pursuers having talked much of the immense amount of bills payable in Glasgow, Edinburgh and London, which they pretend had been discounted by Mr Dunlop for the Greenock Bank, and which it was said inferred extensive powers of agency, the defenders have been at pains to examine their books so far back as July 1791, their books being annually balanced on the first Tuesday of July. And they find, that from 6th July 1791 till Mr Dunlop's failure, he did not discount a single bill for the Bank payable in Edinburgh; and from the same 6th of July 1791 to the failure, he purchased for the Bank only 12 bills payable in London; and from the 6th of July 1791 to the 11th of December 1792, he did not discount for the Bank a single bill payable in Glasgow or in any other part of Scotland; and after the 11th of December 1792, he discounted on behalf of the Bank only a very few bills payable in Glasgow, Port-Glasgow, and Greenock, not amounting in whole to L. 3000 or L. 4000, all of which bills were immediately forwarded to the Bank at Greenock.

Mr Dunlop's agency was confined to the following particulars; making weekly exchanges of the Greenock Bank-notes with the Banks in Glasgow, and with the branch of the Royal Bank there; purchasing bills on Edinburgh, to be remitted to Sir William Forbes and Company, to answer the payments which that Company, as the Greenock Bank's agents at Edinburgh, had occasion to make; and, in fine, receiving payment of bills payable in Glasgow which had been discounted with the Greenock Bank, these bills being transmitted to him from Greenock when the term of payment approached, that payment might be received when they fell due, and the money thus received went to increase the funds in his hands, for answering the payments which he had to make on account of the Bank.

In short, the nature of Mr Dunlop's agency was such, that as he had no occasion, so he never was vested with any powers whatever to bind the Bank in obligations of any kind, or to the smallest extent. His business consisted either in receiving money for the Bank, or applying the ready money funds which were impressed into his hands for the different purposes with which he was entrusted with them, viz. procuring bills on Edinburgh



burgh, at one day's date, to be given in payment of the differences upon the exchanges of notes; purchasing bills to be remitted to Sir William Forbes and Company; and sometimes, though but rarely, purchasing bills in the way of discount.

And the Bank always took care to supply Mr Dunlop with very ample funds for these purposes; and indeed, as things have turned out, they have now reason to regret that they supplied him rather too liberally, and kept his hands rather too full, the consequence of which has been, that at the time of his failure there remained many thousand pounds of the Bank's money in his hands, for which the defenders now stand creditors upon his bankrupt estate. Besides being large creditors on other accounts, the balance against him upon his account-current, which contains his agency transactions, and was in use to be settled monthly, amounted, including interest, on the 23d of March 1793, to no less than

	L. 16,598	10	5
Besides which, he is indebted to the Bank for bills not paid,	8,200	0	0
And on a cash account,	589	0	0

Total debt due the Bank,	L. 25,387	10	5
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And he is likewise indebted to Mr Gammill, one of the defenders, on private account, by bills L. 4176: 16: 3, and his share of stock in the Bank, or the sum due by the Bank to Mr Dunlop on his stock account, at the 23d March 1793, with interest to that date, was only L. 6782: 1: 9.

The balance of his account-current, which shows the ready-money funds belonging to the Bank, in his hands, had increased in place of diminishing betwixt the 31st December 1792 and the 21st of March 1793, having been on the 31st of December 1792 only L. 14,103: 5: 7; whereas on the 23d of March the balance was, as above, L. 16,598, or, exclusive of interest, about L. 15,800.

Mr Dunlop was constituted agent for making the exchange of notes with the branch of the Royal Bank at Glasgow, and the terms of exchange were settled by the following official letters which passed between the cashier of the Greenock Bank and Messrs Scott Moncrieff and Dale, the cashiers of the Royal Bank at Glasgow, in July 1785.

The cashier of the Greenock Bank wrote to Mr Scott Moncrieff thus: ' Sir, Messrs Dunlop, Houston, Gammill and Company having opened a Bank here, and appointed me

July 28.  
1785.

B

their



‘ their cashier, I have to inform you, that Mr James Dunlop  
 ‘ of Garnkirk, *will exchange with you regularly once a-week,*  
 ‘ what of the Company's notes may come into your hands;  
 ‘ and on your advising me what day of the week is most con-  
 ‘ venient for you to exchange notes, I shall give Mr Dun-  
 ‘ lop notice thereof. I am, &c. This letter contains all the  
 powers which Mr Dunlop ever had to transact business of any  
 kind with the Royal Bank, and these powers are expressly con-  
 fined to *exchanging* the notes for some present value, agreeable to  
 the practice of all Banks in such exchanges; and what that  
 present value was that should be to be given in exchange for the  
 differences, is fixed by the answer of the Royal Bank.

Aug 1. 1785.

Messrs Scott Moncrieff and Dale answered, by a letter addressed  
 to the cashier of the Greenock Bank, as follows: ‘ Glasgow, 1st  
 ‘ August 1785. Sir, We duly received your letter of the 28th  
 ‘ past, and agreeable to your proposal, we shall make a *weekly ex-*  
 ‘ *change* of notes with your Company, *and give or take a bill on*  
 ‘ *Edinburgh, at one day's date, for the balance,* - as is our practice  
 ‘ with the other Banks here. If not attended with any incon-  
 ‘ veniency to you, we would propose to make the exchange on  
 ‘ the Tuesday mornings at 8 o'clock, when we settle with the o-  
 ‘ ther Banks. Of this you will please to acquaint Mr Dunlop.  
 ‘ We are, &c.

The mode of exchanging with the branch of the Royal Bank  
 at Glasgow being thus settled, the same was also adopted with  
 the other Glasgow Banks; and this method of giving bills on  
 Edinburgh, at one day's date, for the differences, has been  
 observed with other Banks, as also with the branch of the  
 Royal Bank, down to the present time, with the exception  
 only of the operations betwixt Mr Dunlop and the cashiers  
 of the Royal Bank at Glasgow, from the 1st of January to the  
 21st of March 1793, in consequence of the latent transaction  
 which has given occasion to the present question.

It may here be proper to mention, that the bills on Edinburgh,  
 at one day's date, thus given for the differences, though often or  
 usually drawn upon Sir William Forbes and Company, were not  
 placed to the Greenock Bank's account with that House. The  
 Bank had an account with Sir William Forbes and Company,  
 and Mr Dunlop had also an account of his own with the same  
 House. But, as already observed, the Bank gave no power to  
 Mr Dunlop, of drawing upon their account, or doing any thing  
 else by which he could bind them, or touch their funds, with-

out



out their knowledge. They impressed funds into his hands sufficient, and more than sufficient for answering every purpose of his agency, and with these funds it was his business to purchase or procure the bills at one day's date. He might have purchased them, if he had thought proper, from any third party; but generally, as being more convenient for him, he gave draughts on his own private account with Sir William Forbes and Company. The bills thus given were stated to the debit of the Greenock Bank the same day, in his account-current with them, though they were not paid at Edinburgh till four days after; so that Mr Dunlop had thus four days allowance on each of them, and he had similar allowances from the Bank for remittances made to Sir William Forbes and Company on account of the Greenock Bank.

The Greenock Bank, and the different Glasgow Banks, made weekly exchanges of their notes with the Royal Bank at Edinburgh, as well as Glasgow; and in 1789, the Royal Bank proposed that the exchanges at Edinburgh should be made twice a-week. But, after treating for some time upon this subject, the Glasgow Banks ultimately refused to agree to it, and do accordingly at this day exchange but once a-week at Edinburgh. But the Greenock Bank were prevailed with to agree to the exchange twice a-week in Edinburgh, and gave instructions accordingly to Sir William Forbes and Company, their agents there, from whom the application had come; and they do still exchange at Edinburgh twice a-week, while the Glasgow Banks exchange but once a-week.

It was not without some difficulty that the Greenock Bank consented to this proposal, but they were soothed into it by very flattering professions of great regard on the part of the Royal Bank, and a belief that it would be esteemed as a mark of friendship the more agreeable, as they were thwarted in this matter by the other Banks.

On the 19th of May 1789, Mr Dunlop writes to Mr Gam-  
mill. Dear Sir, Since I wrote you to-day, a friend has  
communicated to me a conversation he had had, which he  
understood to be the sentiments of the Directors of the Royal  
Bank at Edinburgh, who had expressed *their regard for the Green-*  
*ock Bank, and the partners of it, and their sorrow* that the Bank  
seemed disposed to adopt the same measures with respect to them  
as the Glasgow Banks had done: That the only reason they had  
proposed to exchange two days a-week was, because they could  
not overtake it in one; and that as they *wished to live on the best*  
*terms*

Exhib. p. 5. D.  
May 19, 1789.



' terms with the *Greenock Bank*, it would be very pleasing to them  
 ' if they would agree to the measure. I have reason to think  
 ' that this was told with an intention that I *should communicate it*  
 ' to you, which I take the earliest opportunity of doing, trusting  
 ' that it will go no farther. The Royal Bank have always be-  
 ' haved extremely well to us hitherto with regard to our notes;  
 ' and as by this declaration they seem disposed to continue to do  
 ' so, I really think we should not join the Glasgow Banks on this  
 ' occasion, unless you see a greater inconvenience in agreeing to  
 ' the proposal than at present strikes me.

How far the late conduct of the Royal Bank towards the  
 Greenock Bank has accorded with the professions made at this  
 period, your Lordships will judge; and it will be particularly re-  
 marked, that the Royal Bank and their cashiers in Glasgow, then  
 well understood how necessary it was to have the consent of the  
 Bank itself by Mr Gammill, their acting partner at Greenock, to  
 any alteration.

The consent to exchange twice a-week in Edinburgh was im-  
 mediately followed by another application for exchanging twice  
 a-week in Glasgow also. The Glasgow Banks, though they had  
 refused to exchange twice a-week in Edinburgh, had agreed to  
 exchange twice a-week in Glasgow, which gave the Royal Bank  
 a handle for desiring that the Greenock Bank should do the  
 same.

Mr Dunlop, to whom, as agent at Glasgow, this application was  
 made, instantly communicated it to Mr Gammill, the acting  
 partner at Greenock, and he told Mr Scott Moncrieff, who ap-  
 plied to him, that he could do nothing in the matter without in-  
 structions from Greenock.

In one of the letters which were produced by the Royal Bank  
 after some delay, Mr Scott Moncrieff writes thus to Mr Simpson:

Exhib. p. 6. H. ' I called on James Dunlop last night, and was glad to find the  
 May 22, 1789. ' Greenock Bank had agreed. I told him the exchange behoved  
 ' to be twice a-week *here* also, for we could not give bills on E-  
 ' dinburgh and London for his notes, and keep them eight days:  
 ' That the Paisley Company had agreed to this. *He promised to*  
 ' write Gammill, and let me know before next Friday, and I  
 ' suppose that will also be agreed to. We have a great sum of  
 ' their notes; but as he had not heard of any thing of exchan-  
 ' ging twice a-week here, I would not press his doing it to-day.'

Mr



Mr Dunlop, the next day, wrote to Mr Gammill, informing him of the application, thus: ' Mr Scott Moncrieff called on me yesterday, and expressed his satisfaction, and that of the Royal Bank, that we had agreed to their proposal. He said, that they now exchanged *here* with the Banks twice a-week, and insisted upon their balances being paid by bills on Edinburgh at sight: That although *we were not bound to exchange here at all*, yet the Royal Bank *would be obliged* to us, if we would agree to exchange here twice a-week also, and that the balances should continue to be paid in the same way as at present. I told Mr Scott, that I never took any step in the business of the Greenock Bank without consulting you, but that I should write you, and let him know as soon as I had your answer; but before I did so, however, I told him, I wished to ask him one question, ' Whether, in case this request was agreed to, it was to be understood to be final, and that no further innovation was intended?' He assured me in the most positive manner that it was, and at the same time said, that the chief reason of their wishing to exchange twice a-week, was the multiplicity of notes they got, which they knew nothing of, (a grievance which loudly called for redress); and he added, that *if they had been as well satisfied of them all as about ours, they would not be anxious about the matter*, but they did not see how they could ask one to change twice a-week without asking all. He said he had been in Edinburgh two or three days ago, and was desired to assure us, that the Directors of the Royal Bank wished to live with the Greenock Bank on the most friendly terms. It does not occur to me, that changing twice a-week here will make any material difference to us, especially since we have agreed to do it in Edinburgh, &c.

Exhib. p. 4. A.  
May 23. 1789.

Mr Gammill, however, was not satisfied, and he returned an answer, of this date, refusing to agree to the exchange twice a-week in Glasgow, thus: ' I received your letter, dated the 23d current, advising of the proposal made by Mr Scott Moncrieff, for changing our notes twice a-week in Glasgow, which appears to me in such a light as being very unreasonable, and which should not be complied with, especially considering what Mr Moncrieff says of their being so well satisfied with the solidity of the Greenock Bank; and by holding their notes, they are sensible that they run no risk. With other notes it may make it necessary to change them oftener than once a-week.'

Exhibits, p. 5. F.  
May 25. 1789.



Exhib. p. 7.  
May 27. 1789.

Of this date, Mr Scott Moncrieff writes to Mr Simpson: ' In consequence of my waiting on Mr James Dunlop last week, proposing that the Greenock Bank should exchange twice a-week in Glasgow, and of his desiring time to consult Mr Gammill upon the subject, he called on me this morning, to say, and bid me represent to you, that there is nothing they are more averse to than having any difference with the Banks, particularly with the Royal, with whom, above all others, they wish to be on good terms: That therefore they readily agreed to the Bank's proposal of exchanging twice a-week in Edinburgh; but that it would be extremely inconvenient for them to follow the same practice here.' And so he goes on to mention the reasons which were represented against it, and that he, Mr Scott Moncrieff, still insisted upon the exchange being twice a-week.

Exhib. p. 8. D.  
May 29. 1789.

In two days after, he writes Mr Simpson thus: ' Just now Mr James Dunlop has been with me, and brought with him his friend Mr Gammill. I just read to them what you write on their business. They seemed to admit the force of what you say, and expressed the strongest desire of being on the best footing with us, &c. and they promised some time in June to come to a final arrangement, which they had no doubt would be to your entire satisfaction.'

July 1. 1789.

Exhib. p. 6. E.  
July 3. 1789.

In the end of June Mr Dunlop having come down to Greenock, this and other matters were talked over, and Mr Gammill agreed to the exchanges twice a-week, on Tuesdays and Saturdays, as the Royal Bank desired; and accordingly, upon Mr Dunlop's return to Glasgow, he immediately communicated this to Mr Scott Moncrieff, as appears from Mr Scott Moncrieff's letter to Mr Simpson, of this date, where he writes: ' By the by, James Dunlop called to say Gammill would exchange with us twice a-week here;' and in a letter from Mr Gammill to Mr Dunlop of the 3d of July, there occurs the following passage: ' I am pleased that you have informed Mr Scott Moncrieff that you are to exchange with him twice a-week; and the mode you propose, I think, will be attended with no loss to the Bank, at same time it pleases them,' &c.

This alteration of exchanging twice, in place of once a-week, was in itself extremely trifling, and could make very little difference to the Greenock Bank; and, in fact, it made no pecuniary difference to them at all. Mr Dunlop, who was desirous to gratify the Royal Bank, having promised, in order to induce Mr Gammill the more readily to agree, that he would take the Saturday's



day's exchanges upon himself, and not bring them to account of the Bank, as he said he could easily dispose of all the notes that might be received as surpluses for that day's exchange; and accordingly, he still continued to bring the exchanges with the Royal Bank, as well as other Banks with whom he only exchanged once a-week, to his account-current, as agent, only weekly, on Tuesday, as before.

But slight as this alteration was, it appears from the correspondence above referred to, and which your Lordships may see more at length in the exhibits, &c. from No. 3. to No. 21. that it was clearly understood on all hands that it could not be made without authority of Mr Gammill, the acting partner of the Greenock Banking Company; that the Royal Bank, and their cashiers in particular, were fully apprised of this; and that it was accordingly made with the knowledge and consent of the Greenock Bank, and not otherwise. Mr Dunlop, when applied to, says, he could do nothing of himself, but 'promises to write Mr Gammill.' Mr Gammill at first declines; upon which Mr Dunlop informs Mr Scott Moncrieff, that the Greenock Bank would not agree. Mr Gammill is then brought to a personal interview with Mr Scott Moncrieff; and after talking over the matter, takes further time to consider. He at last signifies his consent, by which, and which only, the matter was settled, and Mr Scott Moncrieff then writes to Mr Simpson, 'that James Dunlop called to say Gammill would exchange twice a-week.'

Such being the case with regard to the transaction in 1789, the defenders apprehend the pursuers must find it no easy task to persuade any man of common sense, that Mr Dunlop, who had no power, and who they knew had no power, to enter into a transaction even of that small moment, without authority from the acting partner of the Company, had nevertheless the power of going into one of infinitely greater importance, and of a nature so novel and extraordinary, as to be without any example; and that he was entitled to open a cash-account to an unlimited extent, and to bind the Bank for the whole of his operations upon it; and all this, without their ever being consulted upon, or at all informed of the business.

The private treaty betwixt Mr Scott Moncrieff and Mr Dunlop, which ended in the cash-account that gives rise to the present question, appears to have commenced about the 24th of December 1792, and during the whole progress of it, a constant correspondence on the subject was kept up betwixt Mr Scott Moncrieff, the



the cashier of the Royal Bank at Glasgow, and Mr Simpson, the cashier of the Royal Bank at Edinburgh.

Excerpts of four letters, dated 24th, 26th, 27th and 28th December 1792, were produced, upon a requisition from the defenders, for all letters, made in August 1793, after memorials had been ordered by the Lord Ordinary; and excerpts of three other letters from Mr Scott Moncrieff to Mr Simpson, dated the 31st of December 1792, and 1st and 3d of January 1793, were produced in November, after the memorials were given in; but of the counter part of the correspondence, viz. the letters from Mr Simpson to Mr Scott Moncrieff, and which must have been of very material use to the defenders, not the least remnant exists, the whole having it seems been *destroyed* by Mr Scott Moncrieff soon after he received them. Being interrogated as a haver, 'If he received any answers to all or any of the following letters that he wrote to Mr William Simpson, dated as follows, 24th, 26th, &c. days of December 1792; 1st, 3d, &c. of January 1793; 15th and 18th days of March 1793?' he depones, 'That he did not, upon any occasion, receive any letter relative to Mr Dunlop's account as agent for the Greenock Banking Company, addressed to Scott Moncrieff and Dale, the managers of the branch of the Royal Bank in Glasgow, (prior to Mr Dunlop's failure), in answer to those contained in the question; but depones, That Mr Simpson, the cashier of the Royal Bank at Edinburgh, was in use to inclose in the public letters of the Bank, private notes unsubscribed to the deponent, wrote by his own hand, which the deponent from time to time soon after they were received, *always destroyed*, as considering them of no use; and he does not remember whether or not these private notes were precise answers to the letters of the above dates, although he is inclined to think they might.'

This circumstance of Mr Scott's having destroyed the letters, or, as he calls them, the notes which he received, is very unlucky; and it is the more unfortunate, as the transaction is extraordinary in many of its circumstances, and was studiously concealed from the defenders, who are now said to be so deeply interested in it. But without saying more at present of that half of the correspondence which has perished, they must beg leave to trouble the Court with a few remarks on the other half which has been recovered.

Dec. 24. 1792. In Mr Scott Moncrieff's letter, of 24th December, he complains of the number of Greenock notes that came in upon



upon them ; and in that of the 26th, after mentioning his speaking to Mr Dunlop on the same subject, he gives the following account of the proposal of a cash-account, which it appears first came from him. ‘ In short, after a great deal of talk, good naturedly enough, and he had often asked me *what he could do to please us?* a thought struck me, and I said to him, How would it *do for him to keep an account* with us as the Ayr Bank does? we to collect his notes every other or second day, and place them in one sum to his debit, and get his order on his account for the amount three times a-week. He said, it seemed a reasonable idea, and *he would think upon it*, and let me know in a day or two; but *how was he to pay us?* I said in bills on Edinburgh or London, or other notes, upon the same terms with other people; but he said in that way he might sometimes be owing us L. 2000 or L. 3000. I said I did not think this would be an objection; but as the whole plan only occurred to me that moment, I should ask your opinion upon it, and let him know whether we were authorised to agree to it by the time he had considered it, that is, by Friday or Saturday; so let me know what you say to this. I really think it would be a better plan than refusing their notes, which would give great trouble to our customers.’ And he adds, ‘ And we would save a great deal of trouble in counting his small notes, as, upon that plan, he would *give orders upon us for large sums*, as Mr Hugh Hamilton does.’

Exh. p. 10. B.  
Dec. 26. 1792.

Hence it appears, that by the plan of this cash-account, Mr Dunlop was not merely to give orders upon it for the differences of exchanges of notes, but also to be at liberty to draw upon it for other large sums, to answer any payments he might have to make, in place of making such payments in Greenock notes; in which part of the scheme, the Greenock Bank, it is plain, was entirely lost sight of, and Mr Dunlop must thereby have had full liberty of operating upon it for every purpose of his own; for when he gave such orders, for sums distinct from the differences upon the exchanges, it was impossible to know whether he would otherwise have issued Greenock notes to an equal amount; and as little could it be known, that these notes, if issued, would have come into the Royal Bank. And indeed, there are various other passages in the same letter, which show that both Mr Scott Moncrieff, and Mr Dunlop, and at any rate the latter, must have considered the proposed cash-account as a private one for Mr Dunlop, as an individual. Thus the letter bears, that he asked Mr Dunlop ‘ how it would do for him to keep an account with

D

‘ us;’



' us;' to which Mr Dunlop answered, it seemed a reasonable idea, ' and *he* would think of it, and let me know in a day or two.' But not a word of consulting the Greenock Bank on the subject. And Mr Dunlop then goes on to state difficulties and considerations entirely personal to himself. ' But how was he to pay,' &c. and that he might sometimes be owing L. 2000 or L. 3000, which certainly could not be decently stated for the Greenock Bank, with any regard to their credit.

Exh. p. 11.A. On the 27th of December, Mr Scott Moncrieff writes to Mr  
Dec. 27. 1789. Simpson: ' In reflecting upon the proposed agreement with  
' Mr James Dunlop, I imagine, *after he consults Gammill*, al-  
' though he may agree to open an account with us, he will in-  
' sist on our debiting him in the account with his notes only  
' twice a-week, which he will tell me, is as often as the other  
' Banks exchange, and I want to be prepared for him, in case he  
' should make this proposal.' After which he goes on to mention a  
different plan which he had in view, if Mr Dunlop did not agree.

Here it appears, that Mr Scott Moncrieff was fully aware, that in so far as the Greenock Bank might be supposed to be affected, the consent and authority of Mr Gammill, the acting partner, was indispensably necessary. But the pursuers have not alleged that Mr Dunlop ever shewed Mr Scott Moncrieff any authority from Mr Gammill, or the Bank, or that he so much as once said that the matter had been communicated to them.

It is observable too, that when he speaks of Mr Dunlop's consulting Mr Gammill, he seems chiefly afraid that Mr Gammill would not alter the exchange from twice to thrice a-week, which can only be accounted for, by supposing that he considered the cash-account as a private transaction with Mr Dunlop, for his own personal accommodation, as agent, and with which the Bank had no concern; for otherwise he could not but think that Mr Gammill would have much greater difficulty in agreeing to the extraordinary measure of a cash-account, for payment of the differences upon the exchange of notes, than to any other alteration that could be proposed; since thereby the Bank must have had recourse to the disreputable, as well as losing expedient, of borrowing money at 5 *per cent.* to take up their notes; which could not but impair their credit in the eyes of the public, and would have been at the same time the most absurd thing they could do, as they would have been borrowing money at high interest, without having the smallest use for it, and when they had  
impressed



impressed into the hands of Mr Dunlop himself much more than enough to answer the purpose.

Mr Simpson, it would seem, had signified in one of his letters, that do not now appear, that he did not thoroughly understand this scheme of a cash-account, and Mr Scott Moncrieff writes him farther in explanation, on the 28th of December, as follows :

‘ In my proposal to Mr Dunlop, my object was to save the Bank  
‘ a great loss of interest they now sustain. The plan therefore  
‘ was, that in future *he* should keep an account with us *like any o-*  
‘ *ther man*, on such credit as should be agreed upon; that every  
‘ second day, Tuesdays, Thursdays and Saturdays, suppose we  
‘ should pack up all the Greenock notes we had, and deliver them  
‘ over to him, for which he should give us an order on *his account*,  
‘ and that he should replace this advance *as convenient to him* by  
‘ bills on Edinburgh *or London*, or by the Glasgow notes of other  
‘ Banks, or our own, upon our receipts, just as another man would  
‘ do. The bills on Edinburgh and London *to be taken on the same*  
‘ *terms as from others*. In this way you see we would lose no in-  
‘ terest, but upon the amount of his notes that came unto us the  
‘ day before he took them up. This would be no great matter.  
‘ In short, his account with us would come much in place of  
‘ that he keeps with Sir William Forbes and Company,’ &c.

Exhibits,  
P. 12. A.

Mr Dunlop was thus by Mr Scott Moncrieff's own account of the matter, to keep an account with them ‘ like any other man, ‘ on such credit as should be agreed upon,’ and to operate upon it ‘ just as another man would do,’ to make payments for replacing the advances ‘ as convenient to him,’ not as convenient for the Greenock Bank; and, in short, says Mr Scott Moncrieff, ‘ his account with us would come much in place of that which he keeps ‘ with Sir William Forbes and Company;’ which account with Sir William Forbes and Company was professedly a private account to himself as an individual. And what is said of bills on London ‘ to ‘ be taken on the same terms as from others,’ deserves particularly to be attended to, as this alone clearly shows, that it could not be a transaction with the Greenock Bank, and that Mr Scott Moncrieff, if he allowed himself to reflect, could not have thought it to be so. If it was a proper thing for the Royal Bank to have plenty of London money, it was surely equally so for the Greenock Bank. And it would have been a most extraordinary manœuvre not only to pay *5 per cent.* interest for a loan they did not want, but to pay it in London bills which they had occasion for themselves,



themselves, and by retaining which they could have got a profit, besides being a conveniency; and not only to pay in London bills, but to give them to the Royal Bank at 20 days, when the current rate of exchange the Banks were selling at was 45 days; so that upon each payment thus made, there would have been a loss to the Greenock Bank, besides being a most discreditable operation, contrary to the rules and interest of every Bank.

Exhibits,  
p. 12. D.

In the same letter, Mr Scott Moncrieff proceeds thus: ' In short, his account with us would come much in place with that he keeps with Sir William Forbes and Company, for he told me, that if this plan took place, *he would pay us in such a way as would be for our advantage by bills on London*, and that he was sensible we lost a great sum in interest just now, and that *his advantage* was not equal to our loss; for being obliged to take up his notes on the days of the exchange, when *he did not know* what the sum would be, *he was often obliged to seek about* for bills on Edinburgh, to remit against his draughts, and to take them on reasonable (a mistake in copying for unreasonable) terms, whereas, on this plan, *he might have a few days* to provide his funds. In this way it would be *an accommodation to him*, and as we would charge interest in account against him, it would be an advantage to us. Do you understand me now?'

From the whole of this passage, it is obvious, that Mr Dunlop was treating merely as an individual who had undertaken the agency of exchanging these notes; and that the interest of the Royal Bank on the one hand, and the private interest of Mr Dunlop on the other, were the only considerations attended to, and the interest of the Greenock Bank, who were no parties, was laid out of the question; no doubt, upon the idea, that if Mr Dunlop made good his engagements to them as agent in exchanging their notes, they had no concern with arrangements for private accommodation betwixt him and the Royal Bank. Mr Dunlop, according to Mr Scott Moncrieff's account, declared himself even desirous that the new arrangement should take place, and made offers and promises of advantages to the Royal Bank if it did. ' He told me, (it is said), that if this plan took place, he would pay us in such a way as would be for our advantage by bills on London.' Mr Dunlop's private reason for this keenness, no doubt, was, that he wished to get access to a new fund of ready money for his private use through the medium of this cash-account, by which he did accordingly get L. 9000 of ready cash into his hands within little more than two months. But even the  
ostensible



ostensible reasons mentioned all relate to his private interest as agent: 'His advantage, it was said, was not equal to their loss, for that *he* was often obliged to seek about for bills on Edinburgh, to remit against his draughts, and to take them on unreasonable terms; whereas, on this plan, *he* might have a few days to provide his funds.' All this, it is plain, was his own private concern as agent only. He had undertaken the agency for the Greenock Bank on certain terms, and whether he had more or less trouble in executing the business he had undertaken, or could purchase the bills which he remitted to the credit of his private account with Sir William Forbes and Company, on terms more or less reasonable, was no concern of theirs, but affected himself only; and any transaction entered into for removing such inconveniences, could not possibly be any thing else than a private transaction by himself as an individual; and accordingly Mr Scott Moncrieff represents him as saying expressly, that it would be an accommodation "to him."

The concluding part of the said letter of 28th December 1792, runs as follows:—'I really think this plan would be better than going to war with him, or refusing or sending his notes to Greenock. I was to meet with him this evening, and settle the business, after hearing from you; but I told him at the cross to-day, that as you did not comprehend my meaning, we would delay our meeting till Monday evening, so drop me a line to-morrow. He paid me *many compliments* to-day, and seems quite *reconciled* to the plan. I asked him what extent of credit he thought *he would require*? He said it was really impossible to say till *he saw* the effect of this arrangement; that *he would endeavour* to make the payments to us in such a way as would be agreeable, and for the advantage of our Bank; and that *he wished* we would let it go on some time on this new plan, before we fixed the extent of the credit: Let me know what I shall say to this. I really believe there would be no danger in *letting HIM have all the credit HE will desire*. It may, I suppose, be L. 4000 or L. 5000; but if at a time it should be L. 10,000, it will only be so for a few days; and in fact, it is not much less at present. The account he means to be kept by us for J. Dunlop, for Greenock Banking Company; he said it would be a saving to us of L. 200 a-year interest, and not near so much loss to him, and he made no objection to-day to taking up his notes three days in the week.'

E

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Exhibits,  
p. 12. F.



Here it is observable, that every thing is still referred to the will and convenience of Mr James Dunlop alone, without mentioning or supposing that the Greenock Bank had any voice or interest in the matter. He is asked what extent of credit *he* thought *he* would require; and upon his mentioning, that *he* wishes the extent of the credit not to be fixed for some time till he saw the effect of the arrangement, this singular proposition of an indefinite credit is agreed to; and Mr Scott Moncrieff, says, 'That he really believes there will be no danger in letting *him* have all the credit he will desire.'

This indefinite cash-account was surely a most extraordinary transaction upon the part of the cashiers of the Royal Bank; but although an accommodation to Mr Dunlop as an individual, the Greenock Bank Company certainly stood in no need of any such, and had nothing to do with it.

Exhibits, p. 13.

E.

Dec. 31. 1792.

On the 31st of December 1792, Mr Scott Moncrieff writes to Mr Simpson as follows: 'I am to call on the man with the one eye (Mr Dunlop) this evening, and doubt not will settle the matter *with him*. I am quite aware that I am no match for him, but think we must be better upon the plan proposed, than we were before; and it is to be one part of the agreement, that either of us shall be at liberty to close the account when we please; so that if any advantage is taken from it, we can always stop. I have said nothing about his drawing, so as you should be in cash on Monday; because, by his plan, I suppose, unless you limit him much in the credit, he will *seldom or never draw on Sir W. F. and Company*. He means to give us *such bills on Edinburgh or London as may come in his way*.'

According to this letter, Mr Dunlop had promised not only to give some bills on London, but such bills as came in his way; a circumstance which still more strongly marks that he was entering into this transaction as an individual, and bargaining for himself and his own private interest only.

— p. 14.

Jan. 1. 1793.

In his next letter, dated 1st January 1793, Mr Scott Moncrieff gives an account of two meetings which he and Mr Dunlop had, one on the evening of the 31st of December, and the other the next morning, and also states as follows the manner in which Mr Dunlop's letter of offer, proposing to take the cash-account, was prepared: 'I met with Mr Dunlop last night, and carried with me the scroll of a letter, which I thought it would be necessary for him to write to us as the foundation of the proposed account, and that we might clearly understand each other.'



other. He approved of it, and brought me his letter this morning accordingly, with some trifling alterations. You have annexed an exact copy of it. I mean, if you approve of it, to make out another copy, and send it to him, saying at the foot of it, that we agree to open the account for the purpose, and upon the terms therein mentioned.

What these 'trifling alterations' were, which it seems Mr Dunlop made on Mr Scott Moncrieff's scroll of the letter, cannot appear with certainty, unless the original draught were seen, which has not yet been recovered; but it is not unlikely that they might be alterations of some expressions, by which Mr Scott Moncrieff meant to show, that the Greenock Bank were to be bound; and as Mr Dunlop meant no such thing, knowing that he had no powers to do so, he would naturally alter any such expressions. At the same time, being mutually desirous, from different motives, that there should be such a cash-account, neither may have been much disposed to come to any explanations upon this point, Mr Scott Moncrieff being content to rest satisfied of his own idea, that there was a chance of the Banking Company being bound merely by their agent's taking a cash-account, to be used on executing the agency business, though it was in his own name, and for his own accommodation only.

After mentioning the adjustment of the letter to be given by Mr Dunlop, Mr Scott Moncrieff proceeds thus:—

*I think (says he) the Banking Company is sufficiently bound, the account being opened with him, their agent. I proposed that his orders should be drawn, which place to my account for Greenock Banking Company; and I said, that when bills on London were offered him, of which he gets a great deal, instead of paying his small notes for them, and giving both his clerks and ours so much trouble counting them, when he knew the money would go into the Banks, he might give the people draughts on us. He said, in such cases, it would not do to draw orders in that form, as he would not wish it to be known to the other Banks, that the account was for the Greenock Bank; and that as the ground upon which the account was opened, was clearly explained by him in his letter, to be for the Greenock Banking Company, it was unnecessary to put that in every order. What do you say to this? I do suppose the letter fixes the responsibility completely, without saying any thing of the Greenock Bank in his orders; but I was thinking that perhaps it might be proper, for more security, to get him to say in the letter, that I, as agent for that Bank, oblige myself to pay up the balance, &c. yet I do not know if that is necessary. The sum due*

Exhibits,  
P. 14. C.

us.



us will never, he supposes, be greater than it is at present; perhaps for a day or two, it may be 6 or 8 or 10 m, but I explained to him fully, that it was not meant to be a permanent advance, or any thing more than was necessary for taking up his notes, and giving him a few days time to repay us; and this he understands to be our meaning: He pressed me much to allow him twenty-five days on London bills, which he said would be *greatly in his favour*, and enable him to pay us in that way. I said I did not see it was possible for us to depart from a general rule, as we had never done it in one instance; but he insisted on my mentioning it to you, and so you may tell me what you say on that subject, and now I think you have got enough of this business.

From this letter it is evident, that Mr Scott Moncrieff was himself *doubtful* at the time whether the Greenock Bank could be bound. He *thinks* (he says) that they might be sufficiently bound. He *supposes* that the responsibility might be fixed. But still he is thinking that another clause might be proper to make it clearer, which clause however was not agreed to, for it does not appear in the letter. The truth seems to be, that it was the credit of Mr James Dunlop himself, which was then very high, that removed all difficulties, and otherwise it seems impossible to account for the conduct of Mr Scott Moncrieff and his constituents, in resting satisfied with doubts and suppositions in a transaction of this importance, where there was a credit to be given without limit, and upon which a debt of L. 9000 actually arose in the space of two or three months.

And here it must naturally occur to ask, if the pursuers doubted, why did they not enquire? why did they not apply to the Greenock Bank itself? which was the plain and proper way of obtaining certainty and satisfaction. This is a question which the defenders have often asked since the present cause commenced, but have yet received no answer to it, and it is believed no good answer can be given. If Mr Scott Moncrieff had only taken the trouble to write a few lines to Mr Gammill, the acting partner, or to the cashier of the Bank at Greenock, he would, in the course of a few hours, have received an answer, which would have put an end to all his doubts, by informing him, that the Bank neither were bound by it, nor would authorise or permit any such transaction. The avoiding to take a step at once so obvious, so simple, and so proper, the defenders must be forgiven to consider as an act of concealment, which, to whatever cause

it



It may be ascribed, never can be justified or excused, if there was an intention ultimately to hold the Greenock Bank bound.

The defenders must here also mention another circumstance not unworthy of notice. Mr James Macdowall, one of the partners of the Greenock Bank, resided constantly at Glasgow, and was well known to Messrs Scott Moncrieff and Dale to be a partner of the Greenock Bank, and they had an opportunity of meeting and speaking with him every day if they chose it; but they never once mentioned the matter to this gentleman, who was upon the spot. The very novelty and importance of the transaction might have induced them to mention it to Mr Macdowall, tho' Mr Scott Moncrieff had had no doubts about the matter; but when he was doubting and supposing, and at a loss to determine whether the Bank would be bound or not, surely he would have taken the opportunity to speak to another partner of the Bank, whom he often saw, if there had not been, for some reason or other, a wish to conceal the matter from all the other partners of the Bank. Certain it is, however, that no notice whatever was given to Mr Macdowall of this transaction with Mr Dunlop, nor did he ever hear or suppose, that Mr Dunlop had any account with the Royal Bank for which the Greenock Banking Company could be in the smallest degree bound.

This is an additional circumstance, showing very strongly a concealment of the transaction on the part of the Royal Bank and their cashiers; and though this concealment were to be imputed to mere negligence, the defenders must consider it as a striking and very material part of the present case.

For some reasons or other, it is clear Mr Scott Moncrieff deemed it eligible to enter into a doubtful, concealed transaction with Mr Dunlop, though he doubted of its being effectual to bind the Bank, rather than openly apply to the Greenock Banking Company itself, which would have removed all doubts; and this is the more remarkable, as neither of the two modes which he proposed with the view of making it less doubtful, that it was even meant to bind the Greenock Bank, were adopted. Not the form of the order, for all the orders produced by the pursuers are simple orders by James Dunlop upon his cash-account; nor even the alteration upon the terms of the letter, which if agreed to would indeed have made that letter answer the purpose of binding the Greenock Bank, if James Dunlop had power to bind them; and its not being agreed to, is clear proof, in the defenders apprehension, that Mr Dunlop would not grant any letter importing



that the Bank was bound, or that he assumed a power to bind them ; and accordingly, foreseeing or knowing that it would not be agreed to, Mr Scott Moncrieff endeavours to satisfy himself and Mr Simpson by saying, that he did not think it absolutely necessary.

All the reasons which may have made Mr Scott Moncrieff anxious to enter into this extraordinary private transaction with Mr Dunlop, or may have disposed his constituents at Edinburgh so readily to approve of it, the defenders have no opportunity to know. They may have been various ; but two are pretty obvious, viz. *First*, That they relied upon the credit of Mr Dunlop himself, which was then very high, and which they would naturally consider as abundantly sufficient whether the Greenock Bank was bound or not. *2dly*, They had the temptation of its being apparently a profitable transaction, and for the sake of this profit they were disposed to run some risk, which, however, they considered to be exceeding small with a man of Mr Dunlop's great fortune and credit, especially as they had it in their power to close the account when they pleased, as mentioned in several of the letters.

Exhib. p. 15. D.  
Jan. 3. 1793.

On the 3d of January 1793, Mr Scott Moncrieff writes to Mr Simpson as follows : ' As you have no alteration to propose on Dunlop's letter, I have sent a copy of it, with two lines subjoined, that you may agree to it, and so that ends that matter. He says, *it will be the best account for the Royal Bank in our books.* We shall see if it be so. Meantime, I have the comfort of thinking, *we shall save a couple of hundreds a-year interest by it.*'

Here was the inducement that made Mr Scott Moncrieff and his constituents get over all difficulties, and shut their eyes to all objections. They were eager to enter into a bargain with a wealthy man, as Mr Dunlop was then esteemed, by which they were to make L. 200 a-year ; and though they would have been pleased, for the more security, to have had the Greenock Bank bound also, they were loth to give any obstruction to so good a bargain by being scrupulous on that point. If the Royal Bank had not had the utmost confidence in Mr Dunlop's own credit, it is impossible to conceive that a transaction on which a balance very soon arose of upwards of L. 9000, would ever have been entered into upon a *supposition* that another party was to be bound for it. Had they really looked to that other party, and had they not been anxious, at all events, to open the account, which they

were



were told 'was to be the best in their books,' and which, as Mr. Scott Moncrieff says, 'they at least had the comfort of thinking 'would save them a couple of hundred pounds a-year,' it cannot be imagined that they would have gone so loosely to work, but would have given intimation to the Greenock Bank, which would indeed have cleared up every thing, but would also have put a stop to the transaction. Mr Dunlop was at the time in such credit, and they placed so much confidence in it, that they seemed perfectly satisfied with his security, and contented themselves with the supposition that the Greenock Bank might perhaps be bound, without enquiring further.

As to Mr Dunlop's powers to bind the Bank, which naturally should have been the first subject of consideration on such an occasion, if it had been seriously intended or expected that the Bank was to be bound, not one word appears to have been said about it on either side; the plain reason of which clearly is, that it had been well understood on both sides, that no explanation or satisfaction could be given on that head. Both the parties, from different motives of interest, appear to have been equally desirous to strike up an agreement. They seem, therefore, by mutual consent, to have been silent about any authority from the Bank, or any communication with the Bank, both perhaps being aware that touching upon that subject would only serve to obstruct what they were both desirous of; and when once Mr Dunlop, then a merchant of the first credit in Glasgow, agreed to the proposal, Mr Scott Moncrieff appears to have been glad to ask no further questions. In his letter of the 28th, after mentioning that 'Mr Dunlop paid me many compliments,' &c. he adds, 'and he made no objection to take up his notes three times in the week;' but not one word of his saying that the Greenock Bank had been consulted and approved, or that Mr Scott Moncrieff made any enquiry on this head, though it would certainly have been extremely natural, if he had not been afraid of embarrassing both Mr Dunlop and himself, by putting any such question.

There appears to have been a very extraordinary degree of looseness, through the whole of this transaction, on the part of the managers for the Royal Bank; but to whatever cause that may have been owing, they cannot surely pretend to make a third party suffer because they were loose in their transactions.

Every letter or note received by Mr Scott Moncrieff from Mr Simpson on the subject, as already mentioned, has been destroyed; a circumstance not very consistent with the regular management



of business; but which must appear the more singular when the consequence is attended to, which is, that Mr Scott Moncrieff at this day can show *no authority* for granting this cash-account to Mr Dunlop. What he describes as unsigned notes from Mr Simpson, sent him inclosed in official letters, were, it seems, the only authority he had for opening the account; and these he has destroyed.

See Mr Simpson's deposition as a haver, p. 36. B—E.

No order of the Court of Directors at Edinburgh, it seems, was ever made, authorising such an account to be granted to Mr Dunlop, nor was the matter, notwithstanding its importance, ever laid before any meeting of Directors, though a copy of Mr Dunlop's letter, *officially* addressed to Messrs Scott Moncrieff and Dale, cashiers of the Royal Bank at Glasgow, proposing such a cash-account, was transmitted to the cashier at Edinburgh; and which therefore, according to the common rules, should have been laid before the Directors, and received an *official* answer.

By the rules of the Royal Bank, and of all other Banks, a cash-account is never granted but upon a bond of credit being first regularly executed, is always limited to a certain fixed sum, and a cautioner, one or more, is always required, though the fortune and credit of the person obtaining the cash-account should be ever so great. When Mr Dunlop obtained a cash-account with the Greenock Bank, though it was only for L. 1000, and though he was a partner of the Bank himself, he was obliged previously to grant a bond, with two cautioners; but in this latent and extraordinary transaction of obtaining a cash-account with the Royal Bank, there was no bond of credit, no limitation of sum, no caution found or required.

It has been said, that the Royal Bank, or rather their cashiers, dispensed with a bond of credit, and with caution, because the cash-account was not of an ordinary nature, but intended for the special purpose of facilitating the exchanges of the Greenock notes. But this, it is obvious, is a mere pretence, and cannot be the true reason; for it is clear, that real advances of money were to be made on this cash-account as well as any other, it making no difference with respect to the account, whether such advances to Mr Dunlop were applied for taking up Greenock notes, or for any other purpose. Any balance that might become due, and the balance of L. 9000 that did actually become due, was as much a real debt as the balance upon any cash-account whatever; and therefore, according to the rules of the Bank, there ought to



to have been a bond and caution for this cash-account as much as for any other.

The true reasons of omitting them, besides the general looseness and irregularity of the whole transaction, appear to have been either, 1<sup>st</sup>, That a bond of credit for an unlimited cash-account would have been too formal a departure from ordinary rules; and besides cautioners could not easily have been found for such an unlimited obligation: or 2<sup>dly</sup>, That it would have brought parties to a crisis upon a point on which Mr Scott Moncrieff was evidently unwilling to press Mr Dunlop, viz. Whether the Greenock Bank was to be bound for the cash-account or not; Mr Scott Moncrieff 'was thinking, (as he says in the letter of the 1<sup>st</sup> of January), to get Mr Dunlop to say in the letter, that 'I, as agent for the Bank, oblige myself to pay up the balance,' &c. But he thought proper to wave insisting for such a clause, either because Mr Dunlop refused, or he knew that he would refuse to agree to it. But if a bond of credit had been executed, there must have been an obligation for payment, and it must have been clearly explained, whether the Bank were the principal obligants, and to be bound as such or not; both on account of the form of such a deed, and on account of the interest of the cautioners, to whom this point must have been explained, and who would, of course, have required to see Mr Dunlop's powers, when he pretended to bind the Bank as principal obligant, and who would have communicated with the Bank upon the subject, whether Mr Scott Moncrieff chose to do so or not. Mr Dunlop would then unquestionably have declared, what he says was his understanding all along, whatever might be understood by Mr Scott Moncrieff, that he himself only as an individual, and not the Bank, was to be bound for the cash-account. It would have been stated too explicitly to have been misunderstood or overlooked, that it was neither his meaning, nor had he powers to bind the Bank; and at any rate, it must infallibly have clearly appeared, that he had not powers to bind the Bank, because he had in fact no such powers to show. Thus, it appears, that if the regular mode of executing such a transaction had been adopted, concealment would have been much more difficult, and there either would have been no doubt, that it was not so much as meant to bind the Bank, or there would have been no such transaction.

The letters between Mr Dunlop and Messrs Scott Moncrieff and Dale, containing the agreement for the cash-account in question, are as follow:

G

Mr



Exhibits, p. 15.  
Jan. 1. 1793.

Mr Dunlop writes thus, proposing to take a cash-account:  
Glasgow, 1st January 1793. Gentlemen, As agent for the  
Greenock Banking-Company, and that their notes may be  
exchanged with you in a manner more convenient for you  
and me than hitherto, I am very well pleased to open a cash-ac-  
count with you as cashiers of the Royal Bank here, to be  
kept in the name of James Dunlop, agent for the Greenock  
Banking Company, and propose, that my operations upon that  
account shall be as follows: I shall, three times in the week,  
take up such of the notes of the Greenock Banking Company  
as may come into your hands, by giving you what Royal Bank  
notes I may have, and an order on my account with you for the  
balance; and I shall make payments on said account, in the  
manner most convenient for myself, either by the notes of the o-  
ther Banking Companies, bills on Edinburgh or London, it  
being understood, that you are to take such bills from me up-  
on the same terms as you do from others. The account shall  
be settled once a-year, or oftener, if either party require it.  
The interest to be charged against me at 5 per cent. and you are  
to allow me 4 per cent. on such sums as I may occasionally over-  
lodge with you. Until I see the effect of this arrangement, I  
cannot say exactly what extent of credit I may require upon the ac-  
count; but it will always be in your power to limit it; and I  
shall at any time, upon six weeks notice, pay up such balance  
as may be due to you. It is further understood, that as the  
account is proposed to be opened for our mutual conveniency,  
it shall at all times be in the power of either of us to close it,  
when we shall think that purpose not answered. I am, Gen-  
tlemen, &c. (Signed) James Dunlop. To which, on the 3d  
of January, the following answer was returned: Sir, The fore-  
going is a copy of your letter to us of the 1st current; in  
consequence of which, we agree to open and keep an account  
with you, as agent for the Greenock Banking Company, upon  
the terms and for the purposes therein mentioned; and we are  
respectfully, Sir, &c. (Signed) Scott Moncrieff and Dale.

Exhibits, p. 16.  
Jan. 3. 1793.

Mr Dunlop positively asserts, that as he had no authority to  
bind the Greenock Bank for any such cash-account, so he did  
never mean nor intend to enter into any agreement to that effect;  
that he never once spoke of binding the Greenock Bank, and far-  
less meant to bind them by any thing contained in the above  
letter of 1st January: That on the contrary, he did under-  
stand that the account was given to him as an individual, and up-  
on his own credit only, for mutual accommodation between  
him



him and the Royal Bank, in execution of his agency business, as agent in exchanging the Greenock notes; and that he did truly understand so at the time, is evident from the account with the Royal Bank being entered as a private account in his private books, and from his continuing to keep his account with the Greenock Bank in the same manner as before, without the least reference to the cash-account. In the sequestration of Mr Dunlop's estate, he states the debt due to the Royal Bank as a private debt of his own, and when examined before the Sheriff upon the subject, in terms of the statute, he deponed to this being the fact.

The pursuers, so far as the defenders can observe, have not hitherto alleged that any thing was *expressly said* of Mr Dunlop's binding the Greenock Bank, or that they made any enquiry whether he had or had not any authority to do so. But they *infer*, that he bound or meant to bind them, from his taking the account for his use 'as agent,' and the account being opened for him under the designation of 'agent for the Greenock Banking Company.' It is obvious, however, that there is all the difference in the world betwixt a man's taking a cash-account for the use and behoof of another, and binding that other as agent having power to do so; and his taking a cash-account for himself, and for his own accommodation, in transacting the agency business which he has undertaken to execute for another; and this last is all that Mr Dunlop appears to have done. He does not take the account for and in name of the Greenock Bank, to be operated thereon by him as their agent, under their direction, but for himself, and for his own accommodation in executing the agency business which he had undertaken, and for executing which the Greenock Bank had supplied him with money largely, so that *they* could have no accommodation by a cash-account, though he or the Royal Bank might. This is all that can be understood to be meant by his saying in the letter of the 1st of January, that as agent for the Greenock Bank, *he* was well pleased to take a cash-account, or by the account being opened for him under that designation. And as this is all that ought to have been meant, so upon an attentive perusal of Mr Dunlop's above quoted letter, the defenders are satisfied, that nothing more can fairly be understood to be either expressed or implied therein. The subscription of Mr Dunlop's letter is a simple subscription of the individual James Dunlop, and in the very first sentence of the letter, it



it is his private and personal accommodation that is spoke of as the inductive cause for taking the account, that the exchanges may be made 'in a manner more convenient for you and me, than hitherto. *I am* very well pleased to open a cash-account with you.' Not a word of the Greenock Bank being well pleased, or having any concern in the matter; and though this method might be most convenient for him, it might not happen to be so convenient for another agent. It then goes on and says, 'My operations' shall be so and so, and I will give an order on my account, (not the Greenock Bank's account), for the balance. He further says: 'I shall make payments on said account in the manner most convenient *for myself*.' Here again it was the personal convenience of Mr Dunlop that was to be studied, not the convenience of the Greenock Bank; and then mention is made of making payment in bills on London, which for certain the Greenock Bank never would have done, and these bills are to be taken, 'on the same terms as you do from others,' that is at 20 days par of exchange, when the current rate on London at which the Banks were selling bills was 45 days.

After a provision that the account should be settled once a-year, or oftener if either party required, then follows this clause, 'The interest to be charged *against me at 5 per cent.* and you are to allow me 4 per cent. on such sums as I may occasionally over-lodge with you.' Both the words and import of this clause clearly point out a private account. It is impossible to suppose, that the Greenock Bank could agree to place themselves in so inferior a situation in point of credit, as to pay 5 per cent. to the Royal Bank, and receive only 4 from it, especially when the Greenock Bank stood in no need of any assistance; and what is said of sums occasionally overlodged, clearly relates to what Mr Dunlop as an individual might occasionally do, and as he must have been at liberty to draw out again the sums which he overlodged, this is a further proof that he had powers to make orders upon the cash-account, for other purposes besides paying the differences upon the exchanges. The clause immediately following, 'Until *I see* the effects of this arrangement,' &c. does likewise, by almost every word of it, mark out a transaction with Mr Dunlop as an individual. And the concluding sentence of the letter, 'It is further understood,' &c. again refers to Mr Dunlop's private convenience, and declares, that it should be in the power either of *him* or of the cashiers of the Royal Bank to close the account whenever either of them chose.

The



The defenders must here beg leave to take some notice of a passage in Mr Scott Moncrieff's deposition as a haver, where he seems to have gone a little beyond the limits of a haver, and to have deponed as a witness, though a party in the cause, which, with submission, was not altogether regular or right.

After deponing that he did not preserve the answers which he received from Mr William Simpson, to the letters which he wrote upon this subject, and which have been produced by Mr Simpson, and that he could not remember that he had wrote any other letters to the Royal Bank or Mr Simpson, upon the subject. Being farther interrogated, 'If he received any order or direction in writing from the directors of the Royal Bank at Edinburgh, or their cashier Mr William Simpson, to give Mr James Dunlop of Garnkirk a cash-account; what was the date of that order, if any; and what is become of it?' To which it was objected by the agent for the pursuers, that by this question, an attempt is made to deviate from the purpose of the commission, by proving the tenor of papers, instead of procuring their exhibition: That Mr Scott Moncrieff has already answered, that he had not preserved the private notes from Mr Simpson, but had destroyed the same as he received them; but when he proposed to add, that his instructions by these notes were to keep the Greenock Bank bound, this was objected to on the part of the defenders. To which it was replied, That it was by no means a deviation from the purpose of the commission; the defenders called for the production of an order which they had every reason to suppose existed, but they did not call on him to condescend on the tenor of that writing. After the foregoing debate was closed, the deponent voluntarily agreed to answer the question, and in answer thereto, depones, That he did not receive any order or instructions from the directors of the Bank, or their cashier Mr Simpson, in any public letter, to allow Mr Dunlop a cash-account, which is always given when cash-accounts are allowed, and the security approved of by them; but that in Mr Simpson's private notes to the deponent, above mentioned, he expressed his approbation of an account being opened with Mr Dunlop, as agent for the Greenock Bank Company, for the exchange of their notes, in terms of Mr Dunlop's letter produced in the process, keeping the Greenock Bank Company bound by that transaction.

The defenders shall make no commentary on the irregularity of deponing in this manner as a haver; but they must observe,

that

Exhibits,  
p. 32. G.



that the whole of this deposition of Mr Scott Moncrieff only shows in a stronger light how unlucky, as well as extraordinary, it is that Mr Scott Moncrieff should have destroyed the only instructions under which he acted in a business of this importance. The defenders have no doubt, that both Mr Simpson and Mr Scott Moncrieff rather wished the Greenock Bank to be also bound for more security; but having full confidence in Mr Dunlop's credit, they were not very anxious on the subject. That Mr Scott Moncrieff, however, at least doubted if the terms of Mr Dunlop's letter of the 1st of January, proposing to take a cash-account, would reach the Greenock Bank, is clear by his letter wrote at the time, and already quoted. Perhaps if Mr Simpson's answers had been seen, his doubts might have appeared to have been still stronger; and the defenders are entitled to suppose, that if these answers of Mr Simpson had been preserved, there might have been found some passages in them recommending a direct communication with the Greenock Bank itself on the subject, which was unquestionably the only proper method of removing all such doubts. And indeed what Mr Scott Moncrieff himself says, in that account of Mr Simpson's private notes, which he has been pleased to substitute for the notes themselves, seems rather to import, that Mr Simpson required something more than Mr Dunlop's letter; he says that Mr Simpson, by his private notes, approved 'of an account being opened for Mr Dunlop 'as agent for the Greenock Bank Company for an exchange of 'their notes, in terms of Mr Dunlop's letter produced in process, keeping the Greenock Bank Company bound by that 'transaction;' but these last words imply, that Mr Simpson had directed or expected that some other measure should be taken, distinct from Mr Dunlop's letter for the purpose of keeping the Greenock Bank bound.

Exhib. p. 33. E. In the same deposition, Mr Scott Moncrieff is pleased to 'de-  
 'pone, That Mr Dunlop had no cash-account with the Royal  
 'Bank, but only an exchange-account above mentioned.' This  
 can only be understood as oath of opinion as to the name or nature  
 of the account, and the opinion too of a party for himself, some  
 argument having been drawn by the pursuers from this distinction.  
 But the terms are, with submission, rather too strong, as they  
 may convey the idea of deposing to a fact rather than an  
 opinion; and even the opinion given is clearly proved by  
 written evidence to be erroneous; for in Mr Dunlop's let-  
 ter, proposing to take the account, it is expressly denominated a  
 cash-account; and it will be observed, that the scroll of that let-  
 ter



ter appears to have been written by Mr Scott Moncrieff himself. It bears, 'I am very well pleased to open a *cash-account* with you; and the answer is, 'We agree to open and keep an account, &c. upon terms, and for the purposes mentioned in your letter.' It was therefore a cash-account that was agreed for and opened, or it was nothing. And this is not all; for the receipts granted for money paid in upon the account, and which were signed by Messrs Scott Moncrieff and Dale themselves, bear in express terms that it was 'a cash-account.'

The agreement between Mr Dunlop and Messrs Scott Moncrieff and Dale, for the former's opening a cash-account at their office in Glasgow, being settled by the above quoted letters of the 1st and 3d of January, Mr Dunlop proceeded to operate upon the cash-account. And indeed it is remarkable that he was allowed to draw upon it, even before the agreement was finally settled; for his first draught or order, which is for no less than L. 2226, 19s. is dated the 1st of January, whereas the letter of acceptance, which concluded the bargain, bears date the 3d of January; and on the 1st of January, Mr Simpson, and the directors at Edinburgh, could not know in what terms Mr Dunlop's letter was conceived, for a copy of it was only sent them by that day's post. This circumstance shows in a strong light what complete confidence Mr Scott Moncrieff had in the credit of Mr Dunlop; and it proves, that before the cashier, and directors at Edinburgh, had an opportunity to see Mr Dunlop's letter, Mr Scott Moncrieff at Glasgow had engaged too far to retract.

Upon p. 17. of the exhibits, your Lordships will find specimens of the orders and receipts upon this cash-account, which are in the common style of orders and receipts upon a cash-account: 'Pay to the bearer, &c. and charge the same to account of (signed) James Dunlop.' 'Received from James Dunlop, Esq; &c. which is placed to the credit of his *cash-account* with the Royal Bank of Scotland. (Signed) Scott Moncrieff and Dale.'

The first of these receipts was granted the day after agreeing to open the cash-account, when the matter was quite fresh in Mr Scott Moncrieff's memory, so that he was sensible that it was then a cash-account, whatever other name he may now wish to give it.

This transaction *never was communicated* to the defenders by the Royal Bank, or by Mr Dunlop, either at the time it was entered into or afterwards; and they remained in total ignorance of



of it till the time of Mr Dunlop's failure, not so much as suspecting the existence of such a cash-account, nor did they know or suspect the less material alteration of the exchanges from twice a-week to thrice a-week.

The pursuers do not pretend that they gave any notice to the Greenock Bank; and the defenders have produced excerpts of every syllable in any letter wrote by Mr Dunlop, from the beginning of December 1792, to the 21st of March 1793, that has the least relation to the Royal Bank; but in none of them is there to be found any mention of this transaction, and only in one of them, does there appear a passage which can now be seen to have an allusion to it, though at the time, and when the fact was unknown, it was impossible from thence to divine, that any such transaction, or that any transaction at all in which the Greenock Bank were concerned, had taken place.

The letter here referred to, which was originally produced by the defenders, is a letter from Mr Dunlop to Mr Gammill, dated Exhib. p. 21. five days *after* the commencement of Mr Dunlop's operations on Jan. 5. 1793. the cash-account, and contains the following passage: 'The Royal Bank have been complaining very much of late, and perhaps with some reason, of the number of our notes which were thrown in upon them, especially on the Saturdays, and two or three days ago Mr Scott Moncrieff called, and told me, that he had orders from the directors at Edinburgh, either to refuse our notes altogether, or to send them to Greenock on purpose every day, which he said would be much cheaper to them than the way they were at present, which indeed I believe may be true. I said if such measures as these were resorted to, I believed we could procure as many of their notes as they could do of ours. He said, however that might be, he had directions to make the experiment, at the same time, he would be extremely sorry to take a step of that kind if any way could be fallen on to prevent it. I told him I could think of none, for I *would by no means advise the Greenock Bank to alter the mode of making their exchanges, which had been settled by mutual agreement.* At the same time, as the management of these exchanges had been left entirely to me, if he could think of any way in which I as a *gent could accommodate* them, I should have no objections to try it. After several conversations, he at last made a proposal, which I told him I *should* make trial of, with which he seemed very well satisfied; and in my opinion it will make so little difference if any *to me*, that I can continue to settle the exchanges



' changes with the Bank in the same way as formerly ; and I agreed the more readily, as I think it will prevent a great many of our notes from going to Edinburgh ; the procuring Edinburgh money, to replace which, has been attended not only with expence to the Bank, but lately with very great trouble to me, and no doubt it has also been troublesome to Sir William Forbes and Company.'

As Mr Dunlop wrote in this letter, that he told Mr Scott Moncrieff, he never would advise any change affecting the Bank ; that accordingly there was to be no alteration with respect to them ; and that he would continue to settle with the Bank in the same way as formerly, and did so accordingly ; Mr Gammill made no further enquiry upon the subject, believing it in terms of the letter to be a private business of Mr Dunlop's own, upon which enquiry might be thought indelicate and improper, when Mr Dunlop himself did not enter into particulars. Accordingly, all that he wrote in answer to the above paragraph, was two lines in a letter, of this date, in these words : ' I am glad that you have settled matters amicably with Mr Scott Moncrieff, and that upon such a plan as will prevent our notes going in to Edinburgh, which was troublesome to all parties concerned.'

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p. 22. B.  
Jan. 7.  
1793.

From the above letter of the 5th of January, it is clear, *first*, That during all the communings between Mr Dunlop and Mr Scott Moncrieff, and at the time when the missives were exchanged, no communication was made to the defenders of what was going on ; *2dly*, That they were not informed afterwards of the nature of that transaction, or that there was any transaction at all in which they were concerned ; and, *3dly*, That in place of being informed by Mr Dunlop of any alteration to affect them, they were assured by Mr Dunlop, that he had told Mr Scott Moncrieff, ' that he would by no means advise the Greenock Bank to alter the mode of making their exchanges which had been settled by mutual agreement.'

As to the private arrangement in which Mr Dunlop only was concerned, and of which he did not explain the particulars, the idea that struck Mr Gammill was, that Mr Scott Moncrieff knowing that Mr Dunlop was engaged in a variety of extensive business, with which the Greenock Bank had no concern whatever, had proposed to him to discount some of his private bills at their office, and likewise that he should fall upon some method to prevent the notes of the Greenock Bank which he Mr Dunlop disposed of, from returning into the Royal Bank so quickly in the way complained of by Mr Scott Moncrieff.

I

And



And Mr Dunlop, continuing to settle the exchanges with the Greenock Bank in the same manner that he had done for years before, Mr Gammill had no reason to make enquiry into Mr Dunlop's private transactions with Mr Scott Moncrieff, and he surely never could suppose, that the cashiers of the Royal Bank were capable of acting so very improperly as to attempt to give any account to an agent of a Company on that Company's account, without first settling with them the terms and extent of the credit, and getting their bond or obligation for the amount, before they allowed any operations to take place on the account.

Mr Dunlop had occasion to write at least once a-week, or oftener, to the acting partner of the Bank at Greenock; but in not one of these letters was there one syllable mentioning, or even alluding to a cash-account, or any thing that could lead the defenders to suspect that any alteration whatever had taken place in the mode of exchanging. See excerpts of the correspondence between Mr Dunlop and Mr Gammill in the exhibits; from p. 20. to p. 23. and in the appendix to this paper, from p. 1. to p. 3.

But besides the weekly letters, there were also monthly states of his accounts transmitted by Mr Dunlop to Greenock, which afford, if possible, still more indubitable evidence, that the defenders were totally unapprised of any alteration, and more especially that they neither knew nor could suspect the existence of any cash-account held by Mr Dunlop for which they were to be liable.

Mr Dunlop regularly balanced his account with the Greenock Bank at the end of every month; and on the 31st of December 1792, his account was settled and transmitted to the Greenock Bank, in the same manner as had been done for years preceding, the balance in his hands at that date, being L. 14,103 : 5 : 7; and in like manner, he continued to transmit to the Bank regularly his accounts for the following months, viz. 31st January, 28th February and 23d March 1793, all balanced at these dates, and after debiting the Greenock Bank Company with the last exchange made by him on the 19th of March 1793, the balance due by Mr Dunlop to the Company on the 23d of March, *per* account-current settled of that date, exclusive of interest, was L. 15,818, 5 s. 10 d. being considerably more than when he opened his cash-account with the Royal Bank at Glasgow.

All these accounts of Mr Dunlop's for the months of December 1792, January, February and March 1793, were, since the



the present action commenced, laid before Mr Simpson, the cashier to the Royal Bank, to convince him, 1<sup>st</sup>, That the Greenock Bank had impressed very large funds into the hands of Mr Dunlop, and much more than sufficient to answer all the exchanges at Glasgow, and remittances to Edinburgh; and, 2<sup>dly</sup>, That the cash-account was totally unknown, because it nowhere appeared in, nor had any influence upon these monthly statements of his accounts-current with the Greenock Bank; which must of necessity have assumed quite a different face, and indeed must have been totally altered, if it had been understood that there was a cash-account used in making the exchanges for which the Greenock Bank were liable. And both these points the said monthly accounts do, in the defenders humble apprehension, prove beyond all contradiction.

If the Greenock Bank had known or even had the most remote suspicion that their notes were taken up by orders upon a cash-account for which the Bank were liable, they never certainly would have suffered themselves to be charged *twice* with the same exchanges, once in this cash-account, and again by Mr Dunlop in his account-current with themselves. The shape of the monthly accounts must have altered, for Mr Dunlop could never state as taken up by him, notes for which, on this supposition, the Greenock Bank still remained debtors to the Royal Bank by the entries in the cash-account. The credit, still, therefore, of his account-current every month after the cash-account was opened, must have been *minus* precisely by the balance on the cash-account; and if the Greenock Bank could have acted so absurdly in these circumstances, as to have gone on nevertheless in furnishing him with the same supplies as formerly, the final balance on his account-current on the 23<sup>d</sup> of March 1793 must have been *major* precisely by the balance on the cash-account, that is, must have been L. 9,100 more than it actually was, or L. 24,918, 5 s. 10 d. in place of L. 15,818 : 5 : 10. But as it is impossible to suppose that any persons could be so irrational as to put money into an agent's hands for answering a purpose, when they knew that he was borrowing and getting money upon their credit to answer the same purpose; the consequence of their knowledge of such a supposed account must have been just the reverse; for if they had discovered that he was getting L. 9,100 upon a cash-account from the Royal Bank, for which they were supposed to be liable, they would at once have put an end to the transactions between Mr Dunlop and them, and called upon him to pay up the balance in his hands; and, in short, whether they acted rationally

or



or irrationally, supposing only that they knew of the cash-account, and that they were to be liable for it, the monthly accounts by Mr Dunlop and the balances upon them must have been totally different from what they are, which is demonstration, that they neither did know, nor had any kind of suspicion of the existence of such an account.

The pursuers have said, that after Mr Dunlop got this cash-account, he no longer gave any bills on Edinburgh at one day's date, for the differences of exchanges; and it was insinuated that this circumstance might easily have come to the defenders knowledge, and that they must from thence have been aware, that a material alteration had taken place.

This circumstance, though it had even been true, would have been of no consequence, for the Greenock Bank had no opportunity to know when Mr Dunlop drew, or did not draw on Edinburgh. But, in fact, it proves to be a mistake, for upon application, first to Sir William Forbes and Company, and afterwards to the Royal Bank itself, the defenders have been furnished with a list of a great number of bills drawn by Mr Dunlop on Sir William Forbes and Company at one day's date as formerly, for payment of his exchanges, from the beginning of January to the 19th of March 1793, being the last day on which any exchange was made by him, and all these bills were duly paid. A copy of the list furnished by the Royal Bank, in which these draughts are stated according to the dates on which they were paid, is printed among the exhibits, p. 37. and as all these bills were drawn on Sir William Forbes and Company at one day's date, the date of the bills was exactly four days prior to that on which they were paid. From these lists, it appears that there were 19 such bills paid within the said period, amounting to L. 28,794 : 12 : 9. And it is a remarkable circumstance, that they are all drawn upon Tuesdays and Saturdays, the regular days agreed upon for exchanging between the Royal Bank and the Greenock Bank, and none of them upon Thursday, the new day introduced by the private agreement with Mr Dunlop, which seems to have been purposely done to prevent Sir William Forbes and Company, who were correspondents of the Bank, as well as Mr Dunlop's private bankers from suspecting that there was an exchange oftener than twice a-week, or that the practice of giving bills on Edinburgh at one day's date was altered; and upon enquiring at these gentlemen, it is found, that they never had any suspicion of Mr Dunlop's having made his exchanges oftener than twice



twice a-week. From this, as well as other circumstances of the case, the defenders apprehend, they are entitled to say, there was not only no communication of the transaction, but a studied concealment of it.

The cash-account libelled on, upon which the balance of L. 9182, 16s. 11d. concluded for by the present action arises, is printed among the exhibits, and the defenders must here beg leave to make the following remarks in point of fact, which occur upon a perusal of it.

Exhibits,  
p. 29.

1<sup>st</sup>, Although all the articles in the debit-side are stated as 'Cash in the Greenock Banking Company's notes,' it cannot be shown, nor is there any reason to believe that all the payments upon the orders were truly so made. The fact is not very material, because, though true, it nowise tends to make the Greenock Company liable; but there is no evidence of the fact; Mr Dunlop's orders are the only vouchers for this side of the account, and they are simple orders for payment of a sum, without mentioning whether it was specie, notes, or what notes. On the other side of the account, the payments received are all stated to be in cash; but neither is this exactly agreeable to the fact, for it stands confessed that most of these payments were made in bills.

2<sup>dly</sup>, In one of the articles of the debit-side, there are not only odd shillings, but odd pence, which shows that the payments could not be wholly in Greenock notes.

3<sup>dly</sup>, From Mr Scott Moncrieff's letters to Mr Simpson, it appears, that when the account was opened, it was intended Mr Dunlop should have liberty to make orders upon it, not only for the differences of the exchanges of Greenock notes, but also for any sums he might say he would have occasion to pay away in Greenock notes, which would soon come into the Royal Bank; and how much of the money drawn, was drawn on this account, does not appear, but it may have been a large proportion of the whole.

4<sup>thly</sup>, Mr Dunlop, in his weekly letters to the Greenock Bank, usually stated the amount of the Tuesday's exchanges with the different Banks in Glasgow separately, and in his monthly accounts he stated the total amount of the Greenock notes taken up from the Banks on the Tuesdays. From these materials the defenders have made up an account of the Greenock notes taken up from the Royal Bank at Glasgow upon the Tuesday's exchange, from the 8<sup>th</sup> of January 1793 until the 19<sup>th</sup> of March 1793, agreeably to Mr Dunlop's weekly and monthly reports to them. This account is printed in the appendix, and upon comparing it with the debit-side of Mr Dunlop's cash-account with the

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Royal Bank for that time, they find a striking disconformity, which indicates clearly in their apprehension, that the sums drawn upon the cash-account were not confined to the differences upon the exchanges of notes, but that on several occasions Mr Dunlop has been allowed to draw a great deal more than was necessary for paying the differences on the exchange, and consequently to draw for other purposes.

According to what the pursuers would now have believed with regard to this cash-account, every article upon the debit-side of it is to be understood as precisely the difference upon the exchange of Greenock notes, made on the day on which the article bears date, and for which difference, and for neither more nor less, Mr Dunlop is supposed to give an order on his cash-account. As the differences must obviously be less than the total Greenock notes exchanged, because Mr Dunlop would always or generally be furnished with at least some Royal Bank notes to exchange against part of the Greenock notes, it follows, that the sums stated in the debit of the cash-account, if confined to the differences, must always or generally have been considerably *less* than the amount of Greenock notes exchanged on the respective days, and never possibly could be more. But upon comparing the cash-account with the account of exchanges above referred to, it will be found, that part of the sums stated in the cash-account greatly *exceed* the total of the notes exchanged that day, as appears from the following instances:

Debit in Cash-account.				Total notes exchanged, as advised the Greenock Bank.			
Feb. 26.	L. 2853	8	0	Feb. 26.	L. 2394	16	0
Mar. 5.	3609	16	0	Mar. 5.	2269	18	0
12.	1422	13	0	12.	922	13	0
19.	2184	17	0	19.	1484	17	0
<hr/>				<hr/>			
	L. 10070	14	0		L. 7072	4	0

There must therefore have been other transactions between Mr Dunlop and the Royal Bank of these dates, besides the exchange of notes, to make up the difference of L. 2998, 10s. between the sum charged against Mr Dunlop by the Royal Bank, and the sum which, according to his advices to the Greenock Bank, was the amount of the notes exchanged.

And, *lastly*, It appears from the list of bills drawn by Mr Dunlop upon Sir William Forbes and Company, in favours of Messrs



Scott Moncrieff and Dale, that a bill for L. 2422, 6s. was drawn by Mr Dunlop on the 16th, and paid by Sir William Forbes and Exh. p. 37. Company to the Royal Bank on the 20th of March; but that sum is not credited by Messrs Scott Moncrieff and Dale to Mr Dunlop; an omission which has not been explained; and it is certainly a further proof that the whole business was managed very irregularly.

It would appear from a letter wrote by Mr Scott Moncrieff to Mr Simpson, of this date, that the Royal Bank first began to think of withdrawing this cash-account about that time, that is, six days before Mr Dunlop's failure; and it is said, that this was intimated to Mr Dunlop; but on the 20th of March, *the day before* the failure, it was judged proper to send an official letter in the following terms:

'Sir, We are desired by our Directors at Edinburgh, to acquaint you, that it will not be convenient for them to keep your account longer in this office, and to request you will order the balance advanced by us to be paid up within six weeks from this date, agreeable to the terms of your letter when the account was opened. In the mean time, we are desired to request, that the balance may be reduced immediately to the sum mentioned at opening the account, which was what used to be the amount of your bills running on Edinburgh, for the exchange of the Greenock notes. We are, &c. (Signed) *Scott Moncrieff and Dale.*' And along with this public letter Mr Scott Moncrieff sent also a private letter of the same date, and in the following terms: 'Dear Sir, I am obliged to send *you* the inclosed official letter, which I hope however will put *you* to no inconveniency; but it vexes me to see the balance of your account so high, (it is above L. 9000); and as I was the means of bringing our people at Edinburgh to agree to this account, under the assurance that you would always keep the balance within L. 4000 or L. 5000, I entreat you, Sir, to save me from reflections, by reducing it immediately to that sum, &c. (Signed) *R. Scott Moncrieff.*' It is observable, that in neither of these letters is there any reference to a prior intimation, and the terms of the private letter rather seem to imply that there had been none, at least none positive.

Mr Dunlop answered to the public letter thus: 'Gentlemen, I am favoured with your letter of this date, and observe that you wish *my account* discontinued, which *it shall immediately* be, and the balance paid up *as soon as possible*. I am, &c. (Signed) *James Dunlop.*'

March 15.  
1793.

—p. 24.  
March 20  
1793.

—p. 25.

March 20.  
1793.



'Dunlop.' And to the private letter in these words: 'Dear Sir, I am favoured with your letter of this date, and *am very sorry* the balance on my account should have become so high, which I was afraid would be the case when it was first opened. I shall bring it down as soon as I can. I am, &c. (Signed) James Dunlop.'

In these letters of intimation, both public and private, there is not one word of the convenience of the Greenock Bank, or any communication to them; but it is the individual Mr Dunlop only that it attended to. Mr Scott Moncrieff hopes it will be no inconvenience to him, and adds, 'I intreat you, Sir, to save me from reflections. And in the answers, Mr Dunlop most clearly considers the cash-account as entirely a private concern of his own. He desires no time to inform and consult with the Greenock Bank, but answers at once, 'It shall be discontinued.' And as to paying up the balance, if the Greenock Bank was liable, it was their ability to pay only that was to be considered, but Mr Dunlop speaks only of his own ability to pay; and in place of promising to pay up within the six weeks, or reduce immediately as required, all he says in his answer to the official letter is: 'The balance will be paid as soon as possible,' and to Mr Scott Moncrieff, 'I will bring it down as soon as I can.'

The official letter bears, that it was sent by 'desire of our directors at Edinburgh,' and the defenders wished to have seen these instructions from the directors at Edinburgh given before Mr Dunlop's actual stop, as they might naturally contain some signification of the ideas then entertained with regard to their having any other security than Mr Dunlop's own for the cash-account; but here again they found themselves disappointed. The instructions for granting the cash-account were not preserved, and it seems neither were the instructions for withdrawing it. Mr Scott Moncrieff being called upon as a haver to produce any written orders or directions from the directors of the Royal Bank at Edinburgh, or their cashier Mr William Simpson, to call up Mr James Dunlop's cash-account, declared, that he was possessed of no written order or direction, and deponed, 'That about the beginning of March last, Mr Simpson and some of the directors, when here left verbal orders to shut Mr Dunlop's account, and call up the money owing to the Royal Bank on the said account; and whether any directions were given to the same effect by Mr Simpson, to the deponent in his private notes, he cannot recollect.'

Whatever



Whatever may have been said by any of the directors when at Glasgow in the beginning of March, it seems pretty plain, that there must have been some renewed direction or order, in consequence of which, the official letter of the 20th of March was sent. And as we find three letters from Mr Scott Moncrieff to Mr Simpson on the subject, dated 15th, 18th, and 20th March, there can be little doubt that Mr Simpson must have sent answers to these letters, either in the form of ordinary letters, or what Mr Scott Moncrieff calls private notes; and the defenders cannot here again avoid expressing their regret and astonishment, that such an irregularity should have crept into the management of a most respectable public Bank; that the instructions which their cashier at Edinburgh sends to their cashier at Glasgow upon the most important pieces of business, should not be preserved, and that they should not be merely lost through accident or neglect, but should be deliberately destroyed. The defenders have met with nothing like it in the course of their experience, and it is the more extraordinary, that the letters relative to the withdrawing of the account should not have been preserved, because in order to account for it, it must be supposed, that they were destroyed within a day or two at most after they were received. Exhib. p. 19. and 20.

The notice thus given to Mr Dunlop the day before his failure, that his cash-account was to be discontinued, may fairly be presumed to have proceeded from the Royal Bank having begun to entertain some doubt or suspicion of his credit; and it is therefore strong proof that it was his private credit only that was trusted to; and the notice being given to him alone, without any notice to the Greenock Bank, is a further proof that the cash-account was considered to be properly his concern; and that if any claim upon the Bank was meditated by the pursuers in case of his failure, that still they did not chuse to speak it out, unless the suspicion of Mr Dunlop's circumstances should be reduced to a certainty.

Mr Dunlop stopt payment on the 21st of March, and it was March 21. certainly the greatest as well as most unexpected failure that has <sup>1793.</sup> ever happened in Glasgow.

The Royal Bank and Mr Scott Moncrieff, however, had no reason to be particularly uneasy on this occasion, if they considered it to be clear, that the Greenock Bank, whose solidity and credit were unquestionable, were liable for the large balance on his cash-account.



p. 35. F.

count. Mr Scott Moncrieff wrote to Mr Simpson on the very day of Mr Dunlop's failure; but the pursuers have *refused* to produce this letter. See Exhibits and deposition of havers, p. 35. E. But for proving that it was truly wrote the 21st, though dated the 20th, they showed one passage, which contains these remarkable words: 'Just while writing this, Mr Gammill has called to give me the *overwhelming information*, that James Dunlop has 'stopt payment.' But why should this information have been so overwhelming to Mr Scott Moncrieff, for no other reason, that the defenders can imagine, than because he knew the situation in which the cash-account stood; that they had no hold of any other person, but Mr Dunlop himself, for the large balance, or at least a very doubtful claim. The defenders must regret, that the production of this letter has been refused, as it must throw very material light upon the cause. Had the letter been favourable for the pursuers plea, there can be no doubt that it would have been produced, when required by the defenders. Your Lordships will judge of the reason of the production of it being refused.

Mr Gammill saw Mr Scott Moncrieff twice that day at the office of the Royal Bank, the first time Mr Gammill called wanting a bill on Edinburgh for about L. 1740, at sight, in return for that amount in Royal Bank notes. As Mr Scott Moncrieff would not give a bill at less than three days date, although Mr Gammill offered to pay the difference of time in money, Mr Gammill left the Royal Bank notes with him, desiring him to put up for him in return an equal value in Greenock Bank notes; but Mr Scott Moncrieff did not *then* make any mention of the cash-account, or of any balance due, although it would certainly have been very natural to have done so, if he had thought the Greenock Bank bound, as he had been previously dunning Mr Dunlop to pay up the balance.

At the second interview, Mr Gammill having informed Mr Scott Moncrieff of Mr Dunlop's failure, he then said that Mr Dunlop was owing the Royal Bank a large sum for the exchange of Greenock Bank notes, to which Mr Gammill answered, that that was a matter the Greenock Bank had no concern with.

On the 22d of March the cashiers of the Royal Bank intimated by letter to the Greenock Bank, that they were to hold them liable for the balance on Mr Dunlop's cash-account.

As Mr Dunlop had the charge of exchanging the Greenock notes with the Royal Bank, and other Banks in Glasgow, one of the first cares of the Greenock Bank, upon his failure, was, that there



there should be no interruption in this business till another agent should be appointed; and they therefore, on the morning of the 22d, remitted good bills, payable in Glasgow, to the amount of L. 3609 : 1 : 2, to the cashiers of the Royal Bank at Glasgow, with a request that they would take the trouble in the mean time to manage the exchanges with their own Bank, for both, and to send down the Greenock notes, and pay the differences out of this fund. In answer to this, they received a letter the same day from Messrs Scott Moncrieff and Dale, intimating a claim for payment of the balance on Mr Dunlop's cash-account, with a hint, that their notes would be refused at the Royal Bank, unless it was complied with. The letter runs thus: 'Gentlemen, We are just now favoured with your letter of this date, covering 28 bills, amounting in all to L. 3609 : 1 : 2. Such of these bills as fall due to-morrow, we shall receive payment of, and we shall continue to receive in your notes in payments all to-morrow. But as we told your Mr Gammill when here, we can say nothing farther till we receive instructions from our Directors in Edinburgh, to whom we have sent a copy of Mr Gammill's letter, and we do suppose that they will make it a preliminary condition of any farther transactions, that you pay up or lodge good bills with us against the balance due this office on the account kept in our books, and opened by Mr Dunlop, expressly as your agent; and on the debit of which there is no operation but his orders, given for the amount of your notes delivered here. The balance of that account is L. 9100, 4s. We shall, however, inform you on Monday what instructions we receive from Edinburgh; and we remain,' &c.

Exhibits,  
p. 26. B.  
Mar. 22.  
1793.

And next day Messrs Scott-Moncrieff and Dale wrote as follows: 'Gentlemen, We refer you to our letter of last night; and agreeable to what we then wrote to you, we have this day received your notes in payments; but we are desired by our Directors in Edinburgh to intimate to you, that unless you immediately pay up the balance of your agent Mr Dunlop's account due to this office for your notes, delivered to him, L. 9100, 4s. as mentioned in our last, or put undoubted bills in our hands for the amount by Monday morning at 10 o'clock, we are then to decline taking in any more of your notes at this office. We entreat therefore to have your resolution on this on Monday morning; and we remain,' &c.

Exhibits,  
p. 26. G.  
March 23.  
1793.

The defenders wrote in reply, as follows: 'Gentlemen, We are favoured with your letters, dated the 22d and 23d current; the

Exhibits,  
p. 27. E.  
March 24.  
1793.



the contents of which greatly surprises us. We always kept plenty of funds, (indeed a great deal too much, as it has happened) in Mr Dunlop's hands, for exchanging our notes with all the Banks in Glasgow; and if you gave him notes, without receiving the value, it was at your own risk, and *we can have nothing to do with the balance, which you say is due to you by Mr Dunlop, as that is a transaction between you and him.* We depend upon your taking our notes, in so far as we have put value into your hands; and that in case you do not chuse to favour us by taking the trouble of exchanging for us such of our notes as you receive, we shall get some other person who will be so obliging as to take that trouble. In the mean time, we trust to your taking our notes, as the other Banks do, as refusing them at this very particular time might be attended with serious consequences, which we hope you will not hazard. Mr Gammill cannot leave home to-morrow forenoon, but will see you on Tuesday morning at your office, and retire our notes. Till then we depend on your receiving our notes. All the other Banks have behaved to us in the most friendly and polite manner, when we had occasion to trouble our friends by the very unexpected failure of Mr Dunlop. We are, &c.

Exhibits,  
p. 28. D.  
Mar. 25.  
1793.

Messrs Scott-Moncrieff and Dale sent an answer on the 25th, in which, after pretending to be surprised that the Greenock Bank should dispute their claim, they inform them, 'That in consequence of the peremptory orders we received from Edinburgh, we were under the necessity of refusing to receive your notes this day.' And the Greenock notes were accordingly refused by the Royal Bank.

This was a compulsory measure of the harshest, and the defenders will be pardoned to add, of the least justifiable kind. At any other period, a refusal by the Royal Bank, or its branch, to take their notes, would have been a matter of very little moment or of perfect indifference; and the Royal Bank themselves must have lost more by it than the Greenock Bank could have done; but in spring 1793, a measure of this kind, while it could be of no benefit to the Royal Bank, might have been attended with the most ruinous consequences to the Greenock Bank. That period will long be remembered, as a time of unexampled distress, and general scarcity of money, and deficiency of credit among mercantile men, through all Great Britain. The failure of Mr Dunlop, who had such large sums of the Bank money in his hands, naturally



naturally occasioned a peculiar embarrassment to the Greenock Bank, and even produced a temporary run upon them. In these circumstances, the refusal of their notes by one of the public Banks might well be expected to have the most fatal effects upon their credit. And when, besides the known solidity of the Greenock Bank, and its remaining partners, the Royal Bank were offered an actual deposit of cash, or good bills, to secure the current exchanges, there remained no fair interest that could be alledged, or good excuse that could be offered, for taking a step which might be attended with such unnecessary and irreparable injury to others.

Upon receiving the letter of the 25th, Mr Gammill went next day to Glasgow; but found that nothing could be done with the cashiers of the Royal Bank there, who alledged peremptory orders from Edinburgh. He therefore, after transacting his other business in Glasgow, proceeded to Edinburgh, and had an interview with Mr Simpson the cashier there; at which he stated to that gentleman, the injustice and hardship to the Greenock Bank of refusing their notes at this particular period, and the dangerous consequences it might be attended with, while at any other time it might be of no significance. But Mr Simpson informed him, that the Directors were *determined* not to take any Greenock notes, unless Mr Dunlop's balance was paid up by the Greenock Bank. Upon this, the conversation ended, with Mr Gammill's assuring Mr Simpson, that rather than be thus compelled to submit to a claim which they considered to be unjust, the partners of the Greenock Bank were resolved to run all hazards.

And the hazard was not small; for not only did the Royal Bank refuse to take the Greenock notes, but by their example or influence, the Bank of Scotland also refused them. While the two public Banks were thus refusing the notes of the Greenock Bank, at the same time that they received as usual the notes of the other country Banks, your Lordships may easily judge what inferences may and must have been drawn to the prejudice of the Bank by ignorant tradesmen and country people, who held their notes, or even by others in a superior station; and how fatal the consequences might have been even to a wealthy Company at such a period of universal distress and distrust among mercantile men over all the island, and when the Company were under peculiar em-



barrasments, by the unexpected failure of Mr Dunlop. But rude as the shock was, their credit and resources proved superior to it. The Greenock Bank remained unhurt, after being thus severely tried and subjected to more than the common hazards of that perilous time. And when the two public Banks found that the harsh measure which they had thought fit to adopt, had no effect, they in a few weeks found it expedient to return to the former practice, and receive the Greenock notes, and make exchanges with the Greenock Bank in the same way as with the other Banks.

If the defenders were to speak what they felt and thought when thus treated, their language would be too strong, and they shall therefore leave your Lordships to imagine their feelings, and to form your own opinions of the measures by which the pursuers endeavoured to enforce their claims. They shall only say, that in their humble apprehension it would have been much more becoming such a great and respectable body as the Royal Bank, if, in place of saying, as in effect they did, "Yield this disputed claim of L. 9000, which we say is a just one, though you seem to think otherwise; or if you do not, we shall take certain measures, which though they cannot make our claim one bit better, must be very prejudicial, and may be ruinous to you;" they had held a different language, and said: "Since there is a dispute, it must be fairly settled by law or arbitration. We will do nothing that may have the air of undue compulsion, much less of taking any advantage of the circumstances of the times. Although there happens to be a dispute arising from the mode in which we have transacted with your former agent, we can have no objections to take in your notes, and make exchanges in the meanwhile; your credit being good, and more especially when you offer a deposit for further security, if we desire it; but if we had even been disposed to act otherwise at another time, we never would do it now at this critical and extraordinary period, when, by refusing your notes, we may, without serving ourselves, ruin you." Had the pursuers spoke and acted in this manner, the defenders must have applauded the liberality of their conduct, while they met with them in a fair and candid discussion of the justice of their claim. But, though some may perhaps condemn, it is believed few, who deliberately consider, will find much to approve in the line of conduct



duct that was actually adopted by the pursuers towards the defenders upon this occasion.

This method of compelling payment not having succeeded, the pursuers took the more regular one of bringing an action, concluding against the Greenock Banking Company, united under the firm of Dunlop, Houston, Gammill and Company, and the solvent partners thereof, for whom this information is offered, as well as against Mr Dunlop himself, for payment of the balance of said cash-account. No appearance was made for Mr Dunlop; but the other defenders having appeared in the action, parties were pretty fully heard before the Lord Ordinary; and, of this date, memorials were ordered.

July 3. 1793.

Before preparing their memorial, it occurred to the defenders to be proper that there should be a full production of letters; and accordingly, their agent wrote to the agent for the pursuers, of this date, calling for production of 'all letters, copies of letters, or papers, in which the Greenock Bank, or any of the individual partners of that Bank are mentioned, in the months of May, June, or July 1789, and from the 1st of December 1792, to the 1st of April 1793, viz. public letters to or from the Royal Bank, and public or private letters to or from Mr Simpson, Mr Scott Moncrieff, or Mr Dale.'

July 19. 1793.

To this he received the following answer, of this date: 'Mr Anderson communicated Mr Scott's letter of the 19th of July to Mr Simpson, whose answer was, that there appeared to be no letters in May, June, or July 1789 between either Mr Dunlop, or any of the partners and the Royal Bank, nor betwixt the Royal Bank and Messrs Scott Moncrieff and Dale, on the subject of the Greenock Company. With respect to the correspondence since December last, Mr Scott Moncrieff writes, that he had not preserved any of Mr Simpson's letters to him, which were all private ones; but excerpts are now produced of such of those from Mr Scott to Mr Simpson as relate to the present subject. These were the excerpts of Mr Scott Moncrieff's letters of the 24th, 26th, 27th, and 28th December 1792.'

Aug. 28. —

Excerpts of several letters from Mr Scott Moncrieff to Mr Simpson in May and July 1789, were however, afterwards produced in October 1793, and the memorials ordered by the Lord Ordinary were then given in; the defenders producing along with their memorial excerpts of letters between Mr Dunlop and Mr Gammill, in May and July 1789, with excerpts of the letters.

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ters of the 5th, and 7th, and a letter of the 8th January 1793, which were the only letters in their possession which appear to have any kind of connection with the matter in question.

Nov. 8. 1793. After the pursuers were furnished with the defenders memorials, they produced excerpts of seven more letters from Mr Scott Moncrieff to Mr Simpson, dated 31st December 1792, 1st, 3d, 12th and 30th January, and 15th and 18th March 1793.

When the Court met in November, diligence against havers were granted at the instance of both parties, and additional memorials were allowed to be given in; Mr Scott Moncrieff and Mr Simpson had been examined as havers by the defenders, and Mr Dunlop by the pursuers, they thinking it unnecessary, it would appear, to call Mr Gammill.

The additional memorials were then given in, and upon advising the original and additional memorials, the Lord Ordinary took the cause to report; Mr Gammill, though he happened not to be called as a haver, had thought it proper to prepare excerpts of the correspondence between him and Mr Dunlop, from the 1st of December 1792, to the 21st of March 1793, where there was any mention of the Royal Bank, or their cashiers, whether it could be supposed to have any connection with this cause or not. But as these fuller excerpts were not produced till after the order was made for informations, the pursuers agent objected to their being printed among the exhibits, and he therefore subjoins them in an appendix to this paper.

The defenders have thus laid before your Lordships a full statement of the case, and perhaps it may be thought, that they have been even too copious in their narrative, but they consider the case to be of great importance, both in itself, and as a precedent; and they, therefore, wished that the facts of the case should be fully explained, and thoroughly understood.

Argument in  
defence.

The sum depending on the issue of the question, is nearly L. 10,000, but large as this stake is, it becomes comparatively of small moment when the importance of the precedent is considered; for if an agent without the authority, and without the knowledge of his constituent, may bind him to any amount by taking a cash-account, or getting money upon credit in any other way, no Bank or Banking-house, nor any mercantile man that ever employs an agent, can be secure, but must be liable to be ruined, without the possibility of prevention.

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The claim, and the pretended ground of the claim on the part of the pursuers, are absolute novelties in commercial practice; and, therefore, if they were more plausible than they are, ought to be viewed with a jealous eye. Almost all Banks or Banking Companies have agents for exchanging their notes and other purposes; but the pursuers will not be able to point out a single instance, where any Bank-agent ever took a cash-account from any other Bank, and pretended to bind his constituents for it.

The claim is not only an unprecedented one, but comes attended with every circumstance that can render such a claim unfavourable. The transaction on which it is founded, of an anomalous nature; the execution of that transaction irregular; one half of the correspondence relative to it destroyed; and a total concealment from the parties who are now said to have been chiefly interested in it.

The object of this claim is to subject the innocent defenders to a loss of L. 10,000, on pretence of a cash-account for which they had no occasion, from which they reaped no benefit, and of which they never heard till after Mr Dunlop had become bankrupt. That they had no occasion for, and could reap no benefit from this cash-account, is evident from the large sums which they had in Mr Dunlop's hands for answering the purposes of his agency-business. They had also large sums lying in their own hands at 4 *per cent.* and they might have had more money upon the same terms; and consequently never could have dreamt of borrowing from another Bank at 5 *per cent.* And their being able to answer punctually all demands that came upon them; after the large sums were locked up in Mr Dunlop's hands; and in the trying and critical period of spring 1793, which was fatal to so many; and in the peculiar circumstances of their situation, occasioned by the Royal Bank and Bank of Scotland refusing their notes, is the surest and clearest proof that can be desired, that they had not only ample funds, but great command of money. They never therefore could have thought of a cash-account themselves for paying the differences upon the exchanges of their notes, nor would have listened for one moment to such a proposition; and if the exchanges had been made in the usual way, and the only way which they knew of or authorised, by giving bills on Edinburgh at one day's date, they could not have lost one penny; the last bill of this kind which Mr Dunlop drew, and which was for the last exchange he ever made, *viz.* on the 19th of March, having been duly honoured and paid.

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If the defenders were to be made liable, as the pursuers insist, they would be subjected to a loss which they could by no means have prevented, because they were kept in ignorance of the whole transaction. On the other hand, it is entirely the fault of the pursuers that any such question as the present, or any such loss as that in dispute, ever existed. If they either had not proposed this unprecedented measure of a cash-account to be given to an agent for exchanging notes with a view to their own private gain, or when they proposed it, had communicated the same to the defenders, as in the fair and regular practice of business they ought to have done, the transaction upon which the loss arises, that is the subject of dispute, never would have taken place. It seems obviously most just, that the party who made such a transaction, and who made it in an irregular, improper and concealed way, should suffer any loss arising from it, rather than a party who had no hand in the transaction, who could not prevent it, and from whom it was concealed.

The simple statement of the facts and correspondence, with the incidental observations made in the course of it, it is humbly thought, must, without any thing further, be amply sufficient to satisfy the Court, and all impartial persons, that the present is a very groundless claim. But the defenders must now beg leave to call your Lordships attention more particularly to some of the various and separate relevant defences, which, as they conceive, do arise to them upon this case.

First special defence.

No powers to bind the Bank.

And, *first*, they submit it as a clear and conclusive defence, independent of every thing else, that Mr Dunlop had no powers to bind the Greenock Bank for any such cash-account. He in fact did not intend to bind the Bank; nor are there any words in his letter, proposing to take the cash-account, that can bear that construction. But supposing he had intended it, and had used the most express words, it would be of no moment, for he had no powers.

The defenders need not use argument to prove, that an agent cannot go beyond the limits of the powers committed to him; and that if he pretends to bind his constituent, when he has no power or authority for so doing, his acts may bind himself, but will not affect his constituent in the smallest degree. Now, the defenders have called upon the pursuers to point out any power or authority



ty which Mr Dunlop had to take a cash-account, either in name of the Greenock Bank or in his own name, and to bind the Bank for the operations upon it, and they have not been able to show, nor ever can show the least vestige of any such power. On the contrary, it is certain, that Mr Dunlop, by the nature of the agency committed to him, never had power to grant any obligation binding the Bank to the extent of 20 s. and much less then could he bind them for a cash-account, upon which a debt of many thousand pounds might arise, and has arisen.

It is in the character of agent for exchanging Greenock notes with the Royal Bank, that he is pretended to have bound the Greenock Bank for this cash-account. But the nature and limits of this agency are expressly settled by the letters of the 28th of July and 1st of August 1785, which passed between the two Banks, whereby Mr Dunlop was constituted agent for making the exchanges, and the mode of executing this business was precisely settled. The cashier of the Greenock Bank writes to the cashiers of the Royal Bank, that, 'Mr James Dunlop of Garnkirk will *exchange* with you regularly once a-week what of this Company's notes may come into your hands,' &c. To which the cashiers to the Royal Bank answer: 'Agreeable to your proposal, we shall make a weekly exchange of notes with your Company, *and give or take a bill on Edinburgh, at one day's date, for the balance.*' Here was a rule laid down for Mr Dunlop's transactions with the Royal Bank, and here they saw all the authority that was committed to him, which was not to contract any debts, nor come under any obligations in name and behalf of the Greenock Bank, but simply to do a certain piece of business, in which present value was always to be given on both sides, *viz.* making an exchange of notes, in which, notes were to be given against notes or bills on Edinburgh, at one day's date, but no credit was to be given on either side. It was incumbent on the Greenock Bank to supply their agent with bank-notes or other funds for making these exchanges, but nothing could be more foreign to such agency business than the power of contracting debt.

If an agent employed for a Bank to make exchanges of its notes with another Bank, should, in place of making any exchange, pocket and apply to his own use the notes and other funds with which he was furnished for that purpose, and should take up the notes of the Bank which employed him, by granting an obligation



tion in the way of a letter, agreeing to take a cash-account, or otherwise obliging the Bank itself afterwards to pay the value of them, it is plain, that he not only would be acting without authority, but in direct contradiction and opposition to the very terms of his appointment, and the nature of the business in which he was employed; for in this way there would be no exchange at all, as a Bank or Banking Company getting up its notes upon credit, or an obligation to be afterwards accountable, certainly does not get them in the way of exchange; and as such a transaction is so palpably contrary to the nature of the business, and the terms of the agent's appointment, the other party cannot possibly be ignorant that he has no authority, as agent, for making it.

Accordingly, no Bank-agent for making exchanges, of whom there are many, ever attempted to take a cash-account, or bind his constituents for it; nor did ever any Bank before think of entering into such a transaction with an agent, whom another Bank had appointed for making its exchanges. It never was imagined that any Bank-agents, with the most extensive powers, such as those to whom the conduct of branches at different places is committed, could do such a thing; nor was it ever attempted.

Even when a factor or agent is employed to make purchases for another, which is a business that may seem naturally to involve bargains upon credit; yet if the constituent has impressed funds into the hands of the factor or agent for making these purchases, the factor or agent cannot bind the constituent even for the price of goods purchased on his account, and delivered to him, which was expressly decided, and upon very sound principles of law, in a case to be found in Lord Kames's Select Decisions, January 4. 1766, *Hunter contra Chalmers and Company*. The defenders had impressed very ample funds into the hands of Mr Dunlop, for making their exchanges, and all other purposes; and the principle of the decision in the case of Chalmers and Company must apply *a fortiori* to the present case, where the nature of the business in which he was employed did necessarily imply, that there was to be no trust or credit, but an exchange for present value only.

If the pursuers really did suppose that Mr Dunlop was binding the Greenock Bank, and had powers to do so, the defenders would beg leave to ask, why they did not desire to see those powers? This must have brought out the fact at once, that he had



had none; and if they did not even ask to see his powers, when entering into a transaction of such importance, this was surely such an act of unparalleled negligence, as leaves them without excuse or pretence of complaint. But it is difficult to imagine how they could suppose it, when the transaction was so directly contrary to the terms and nature of his appointment as agent, and when they had been so thoroughly informed on occasion of the small alteration which took place in 1789, that Mr Dunlop had no power to do any thing whatever affecting the Banking Company, and accordingly treated for and settled that alteration with Mr Gammill, the acting partner, and received his approbation before it took place. If Mr Dunlop had not power to make even a small variation on the days of exchanging, how much less could he be supposed to have power to bind the Company in the new and extraordinary transaction of taking a cash-account to an unlimited extent,—a transaction altogether singular and unprecedented, and likewise in every view contrary to the interest, and derogatory to the credit of the Bank.

A very strained attempt was made, to shew that Mr Gammill, the acting partner at Greenock, had by implication given some countenance or authority to the transaction. It was not pretended that he had ever heard of it, or knew that any such cash-account was granted; but it was said, that at some prior period, when Mr Scott Moncrieff had happened to meet with Mr Gammill, and he had complained of the Greenock notes coming back so suddenly into the Royal Bank, that Mr Gammill had referred him to Mr Dunlop for satisfaction on that head. Reference was made for the fact, to one of the answers that Mr Gammill had given to certain queries put to him by the pursuers in the course of the cause; and it was said, that this conversation with Mr Scott Moncrieff, might be deemed an authority or consent on the part of Mr Gammill to the transaction in question, though unknown, or any other transaction which Mr Scott Moncrieff might enter into with Mr Dunlop, for removing the inconveniencies that were complained of.

This pretence of authority is too far-fetched, and too visibly groundless to deserve any serious refutation. The truth is, that any conversation which Mr Gammill ever had with Mr Scott Moncrieff, could only tend to satisfy that gentleman, that the Greenock Bank were determined against making any further concessions, and must therefore have left no doubt in his mind, that such a thing as a cash-account was the very last thing that Mr



Gammill or the Greenock Bank would ever be disposed to agree to.

The passage in Mr Gammill's answers to the queries upon which the pursuers have attempted to found, is so far from being favourable to them, that it makes directly against them. The query and answer run as follows: ' Did not Mr Scott Moncrieff, when he happened to meet with you, complain of the loss of interest, and inconvenience attending those bills granted by Mr Dunlop, and insist that some new mode should be adopted to relieve the Bank thereof; and did not you on such occasions always refer Mr Scott Moncrieff to Mr Dunlop for satisfaction on that head? *Answer*, When I occasionally saw Mr Scott Moncrieff, which was but seldom, he complained to me of the great number of guinea notes of the Greenock Bank which came into their office, and said that by their taking Mr Dunlop's bills on Edinburgh at one day's date, that it was a loss of interest to the Royal Bank, and I believe that he may have said, that he wished some mode should be taken to prevent it. To the best of my recollection, *I told him that the terms of exchange had been settled by agreement, and that the Greenock Bank kept very ample funds in Mr Dunlop's hands for paying these exchanges, which I was persuaded he paid punctually; and that I should speak to Mr Dunlop to prevent the Greenock Bank notes from returning to the Royal Bank branch in the way he mentioned, and to the best of my recollection, I did so more than once. At same time I told Mr Scott Moncrieff, that by their drawing on Edinburgh at sight for other notes than their own, when the other Banks in Glasgow were drawing on Edinburgh at not shorter than one day's date, that this was in a manner inviting people to carry stranger notes into their office when they wanted Edinburgh money; and to the best of my recollection, I never gave Mr Scott Moncrieff any reason to think that Mr Dunlop had any power or liberty to get indebted to the Royal Bank branch, or any other Bank, for account of the Greenock Bank, in exchange of their notes, or otherwise, but on the contrary, he was to pay the exchanges punctually, from the very ample funds of the Greenock Bank, which were in his hands, and I referred Mr Scott Moncrieff to Mr Dunlop for satisfaction as to the manner he disposed of the notes after the exchanges, which was the principal thing Mr Scott complained of.*

The circumstance of Mr Dunlop being a partner of the Greenock Bank can be of no consequence. He does not enter into this



this transaction in name of the Company, or as a partner of it, neither does he sign the firm of the Company, which alone could have bound them as a Company, if it had been lawful for him to do so. The letter, proposing to take the cash-account, is signed by the individual James Dunlop, and he there proposes to take it for himself as agent for the Company; and the pursuers themselves do not pretend to have transacted directly with the Greenock Banking Company, or with a partner acting in name of it, but with 'James Dunlop, Esq; agent for the Greenock Bank;' and it is therefore necessary for them to show, that this agent had powers of agency, authorising him to do what he did, or what he is said to have done.

The truth is, that neither Mr Dunlop, nor any other of the particular partners of the Greenock Bank, had power to sign the firm, or to bind the Bank to the smallest amount, it being by the contract of copartnery expressly provided, that the firm should only be signed by the cashier of the Company. The pursuers have said, that such articles in private contracts of copartnery cannot affect the public. Whether they can or not, is however a question which the defenders have no occasion to enter into. There might have been room for it, perhaps, if Mr Dunlop had signed the firm of the Company; but this he did not do, knowing that he had no right to do so, or to bind the Company in any obligation, and that it would have been an act of gross fraud, and breach of contract with his partners, if he had attempted to do it; and as the pursuers never proposed that he should sign the firm, nor suggested, so far as appears, the idea of entering into a direct contract with the Banking Company itself, it is probable they were apprised of this clause in the contract of copartnery, restraining any individual partner from signing the firm, or entering into any contract or agreement in name of the Company.

The defenders do therefore submit it as a clear and undeniable proposition, that Mr Dunlop had no power whatever to bind the Greenock Bank for this cash-account granted to himself, and they consider that proposition as decisive of the cause.

But, in the next place, they go farther, and do contend, that there is no evidence that it was *part contractus*, even between Mr Dunlop and the Royal Bank, that the Greenock Bank should be bound for this cash-account, but that, on the contrary, upon a fair and legal construction of the transaction, and of the letters of the 1st and 3d of January 1793, which are the only documents

2d Defence.

No intention to bind the Bank, nor any obligation to that purpose in fact granted.

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ments of the agreement, it must be held, that Mr Dunlop engaged his own private credit only, and did not even attempt to bind the Bank, nor used any words which can be understood to import that the Bank were to be bound.

Mr Dunlop, one of the parties to the transaction, does certainly say, that his meaning was as stated by the defenders, and he may well be believed, as he has no sort of interest in the question, since it can make no difference to him whether the Royal Bank or the Greenock Bank rank upon his bankrupt estate, for the balance of this cash-account. And his conduct all along, and indeed the conduct both of him, and of the cashiers of the Royal Bank, has been agreeable to what he now says, and is not reconcileable to a contrary supposition. The orders upon the cash-account are simple orders by him as an individual, and the receipts granted for money paid in, are simple receipts to him as an individual. The time at which the cash-account was withdrawn, and the terms of the letters written on that occasion by Mr Scott Moncrieff, strongly indicate an impression, that the cash-account was a concern of Mr Dunlop as an individual, and his answers do speak in the plainest language, that he understood himself as an individual to be alone concerned.

Accordingly when Mr Dunlop made up and gave in a state of his affairs under his sequestration, he stated the balance upon the cash-account in question, as a *private debt* due by himself to the Royal Bank, and to this state he *made oath* as the statute requires. If any credit is due, therefore, to what Mr Dunlop has not only said, but solemnly sworn, after he ceased to have any pecuniary interest in the matter, he never did consider the Greenock Bank as concerned in the transaction, or liable for any balance that might arise upon the cash-account.

It is true, that from the excerpts which have yet been produced of the imperfect remains of the private correspondence between Mr Scott Moncrieff and Mr Simpson, it may seem that there was a wish on that side to have the Greenock Bank bound for the cash-account. But it is impossible to form any just idea of the true import of that correspondence, when all the letters on one side have been destroyed, and for any thing the defenders know, if Mr Simpson's answers had been seen, it might have appeared that he signified in some of them, perhaps in reply to Mr Scott Moncrieff's of the 1st of January, that it was needless to be very anxious about the Bank, or to press that point, if Mr Dunlop seemed lay upon it, as his own security would at any rate be sufficient.



cient for all the credit that was to be given. One thing is clear, that they were much more intent upon opening at any rate an account which was to be the most profitable in their books, than about ascertaining whether the Greenock Bank was to be liable for it or not; for otherwise they would never have proceeded under those doubts which they confessedly had upon this point, and never would have omitted to apply to the Greenock Bank itself.

The pursuers may perhaps allege, that according to what Mr Scott Moncrieff says in his letter of the first of January, he must have spoke out pretty plainly to Mr Dunlop his idea or expectation, that the Greenock Bank were to be bound for the account. But the answer is obvious. That letter can be no evidence, either against the defenders or Mr Dunlop, and besides a very slight variation of the expression, or the omission only of a sentence or two, might make the real import of the conversation, about the tenor of the orders on the account, very different from what it appears in that letter. But the facts, which cannot be altered, are all against the pursuers, as to the construction of the agreement. If it be true, (and the defenders know not whether it is or not), that Mr Scott Moncrieff proposed, that Mr Dunlop should draw the orders on the account for the Greenock Company, it is certain that Mr Dunlop, in fact, did not do so; and the defenders are therefore entitled to presume, that he declined to do it, lest it should give any countenance to the idea of the account being held for the Greenock Bank, or their being bound for it. And if Mr Scott Moncrieff was thinking, as he says, to insert a clause in Mr Dunlop's letter, bearing, that 'I, as agent for the Bank, oblige myself to pay up the balance,' since in fact no such clause was inserted, the pursuers are entitled to hold, that he durst not venture to propose it to Mr Dunlop, as coming too close upon the point of the Greenock Bank being bound, which Mr Dunlop truly did not mean, and that he therefore thought it better to let the matter rest where it was, and take his chance of any subsidiary claim against the Bank, that could be founded on the circumstance of Mr Dunlop's taking the account, as agent for making their exchanges, and for which subsidiary claim, he no doubt flattered himself, there was hardly a possibility of there ever being any occasion.

In construing the letters of the 1st and 3d of January, by which the cash-account was agreed for, the construction must

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certainly be taken *in dubio* against the pursuers, *qui potuerunt clarius legem dixisse*. The letter of 1st January, though signed by Mr Dunlop, was wrote out from a scroll of Mr Scott Moncrieff's, and afterwards adjusted at the sight of the pursuers; and if they did not think it explicit enough, they might have rejected it, and insisted for another; and when they found upon it therefore in a question with the defenders, they are answerable for the explicitness of it, as much as if it was their own deed. The defenders had no voice in the matter: They were not so much as allowed to know that any such transaction was going on; and if they were to be bound at all, the obligation was to be imposed upon them while they were absent and ignorant. In these circumstances, and more especially considering the unprecedented nature of the thing, it was peculiarly incumbent upon the pursuers, if they meant that the Greenock Bank should be bound, to take care that this should be expressed, in the clearest and most unequivocal words, and not left to doubtful implication from the construction of ambiguous phrases. But your Lordships have had occasion already to peruse and consider these letters of the 1st and 3d of January, and it is clear, that there is not one word in them, importing that the Greenock Bank were to be bound; and, on the contrary, the defenders have pointed out, that almost every sentence, contains something, importing that this account was the private account of James Dunlop, and to be taken upon his private credit only. He subscribes as an individual, and he no where gives any hint that the Greenock Bank were to be bound.

The pursuers do not, and cannot pretend that there is any thing like an express obligation upon the Bank, to be found in Mr Dunlop's letter; but they argue, that it is to be reared up by *implication*, from his proposing to take the account, in the character of agent for the Bank, and from his using it chiefly for the purposes of his agency. But as already observed, there is not the least foundation for this implication, and the pursuers in their argument, do erroneously confound two things that are perfectly distinct, *viz.* a man as agent making a contract for his constituent, and binding that constituent therein, of which there is not the least trace in the present case; and one who as agent, has undertaken the execution of a particular business, making a contract for his own accommodation in the execution thereof, wherein he binds himself only, and neither can nor ought to bind any other; and this is all that Mr Dunlop did, when he agreed to take the cash account.



Let us suppose, that Mr Dunlop had wrote a letter to the cashiers of the Royal Bank in the following terms: 'Gentlemen, As agent for the Greenock Bank, and seeing, that I find it inconvenient and troublesome for myself personally to purchase bills on Edinburgh, at such short notices as the exchanges require, though I had undertaken to do so, and am furnished with sufficient funds by the Greenock Bank for that purpose; I propose to run an account with you, and once a fortnight, or once a month, to grant my own bill, or my draught upon London, in terms advantageous for you, for the amount.' It surely could not be alleged, that in this case the proposal was understood as made in behalf of the Bank, and not in behalf of the individual, and for his accommodation in the character of agent. This case, however, seems to be precisely similar to the present case.

All the circumstances of the fact, as well as the terms of the letter, concur to show, that the construction which the defenders give to this letter, is the just and the legal one.

Every man is presumed to act legally and fairly, and not to do any irregular or unlawful act, till the contrary is proved. If the defenders construction is taken, the letter is a fair and lawful deed, since every man is at liberty to bind himself as he pleases, whatever may be thought of the prudence or propriety of the transaction in other respects. But upon the pursuers construction, it would be highly fraudulent, since Mr Dunlop knew that he had no powers to bind the Greenock Bank, and knew also that the Greenock Bank had impressed into his hands ample funds for answering all demands; and therefore to attempt to bind them in a cash-account, supposing he had powers to do so, while he applied the money with which they had entrusted him for other purposes, would have been an act of very gross fraud.

Whatever the pursuers might understand, or may now say they understood, is of no consequence, unless it could be made out that Mr Dunlop, the other contracting party, understood the same; and with regard to the pursuers understanding, they seem to have only this alternative, either they understood that the Greenock Bank were not bound, in which case their conduct is perfectly consistent, and requires no apology; or they supposed, that the Greenock Bank were to be bound for the account and balance thereof; in which case, the concealment from the Bank, and Mr James Macdowall, a partner on the spot at Glasgow, in the defenders humble apprehension, admits of no good apology.

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or excuse; and either way, the defence against the claim is equally strong.

The payments upon the cash-account in London bills, at 20 days, which were stipulated by the letters of agreement, and which it is believed were actually made, are, as already observed, strong proofs that the account was considered to be a private account of Mr Dunlop's. But what is still stronger than his giving London bills which he had purchased, in payment of the account, the defenders have reason to believe, that he also gave several large draughts on Mr Simon Fraser, his own private correspondent in London, to be placed to the credit of this cash-account, which he never would have done if he had not considered it to be a private account of his own; and this very circumstance must have shown to the pursuers that he did consider it in that light. And what makes the circumstance of his giving draughts on his own private correspondent in London the more striking is this, that the Greenock Bank had also a house in London, with whom they corresponded, and upon whom they drew. But though Mr Dunlop gave draughts upon his own private correspondent, he never attempted to give a draught upon the Bank's correspondent, upon whom indeed he had no power to draw.

A letter from Mr Scott Moncrieff to Mr Simpson, dated 30th January 1793, deserves attention in the present view. He there writes thus: '*James Dunlop's account to-day is L. 6000 odds. He was again upon me about taking bills on London at 25 days, and said, if we did that, he would give us about L. 1000 a-week; but Mr Dale thought, and I told him, that it was very wrong in him to give 25 days, (which he says he gives), as he is agent for a Bank. He said it was not as a Banker he did it, and that none of these bills are remitted to the Greenock Bank. He goes into Edinburgh to-morrow; probably you may see him. He said instead of giving 25 days, we might take these bills at 20 days, when he gave them, and allow him five days interest on all London bills at settling the account, that is the same thing, but it avoids the appearance of breaking through a rule.*' The conversation related in this letter, clearly imports, that Mr Dunlop understood and believed the account to be his own private account, the profit and loss upon which was to affect himself, and that Mr Scott Moncrieff must have seen and known that he so understood.

The remarks formerly made, and which shall not here be repeated, as to the particulars and nature of the different entries in the cash-account, and Mr Dunlop's being allowed



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In one of Mr Scott Moncrieff's letters to Mr Simpson, where he first broaches the scheme of an account, he says, that he asked Mr Dunlop, 'How it would do for him to keep an account with us as the Ayr Bank does?' And in the end of the same letter he says, 'Willie takes up the Ayr notes from the other Banks on Tuesdays and Fridays, and gives an order on their account with us for the whole.' Upon enquiry, the defenders find that this account for the Ayr Bank (Hunters and Company) was an account not taken by any agent, nor held in name of any agent, but an account held in name of Messrs Hunters and Company themselves; and it was not a cash-account, but a deposit or 4 per cent. account, which is a very different thing; and when orders were given upon this account by any agent authorised so to do, the orders were signed by such a person 'for Hunters and Company,' or bore to be placed to the debit of Hunters and Company. These facts afford two material inferences: 1mo, That not a single example can be given of an account taken by an agent, and held in his name, for which the Banking Company, his constituents, were liable; the only instance that seemed to be pointed at, turning out against the pursuers: And, 2do, That Mr Scott Moncrieff himself seems at first to have had in view an account to be held by the Greenock Bank itself, and to the granting of which they were to be parties; or such an account only as would be similar to that of Hunters and Company, but afterwards gave up that idea, and resorted to a cash-account to be held by the individual James Dunlop.

Again, it will be observed, that according to the letters of agreement, and the nature of the cash-account which was granted, it could be used by James Dunlop only, and by no other person. Suppose the Greenock Bank had changed their agent, their new agent could not possibly have used this cash-account, which was strictly personal to James Dunlop; and this surely is a strong proof that it was taken and granted for the use and upon the credit



dit of him as an individual, and not for the use or upon the credit of the Greenock Bank.

3d Defence.  
Claim barred  
by conceal-  
ment, and  
other irregu-  
larities in the  
transaction.

The *third* and *last* head of defence which the defenders must humbly submit to your Lordships is this, that the concealment, and other irregularities on the part of the pursuers, in the transaction in question, must bar any claim at their instance founded upon it against the Greenock Bank. And this head branches into several points, each of them, *per se*, in the defender's humble apprehension, amounting to a relevant defence, and much more all of them together.

1. The concealment of the transaction, and the culpable conduct, at least inexcusable neglect of the pursuers, in having no communication with, and giving no notice to the Greenock Bank, (supposing them to be parties concerned), is the first point to be attended to.

By this culpable conduct, or culpable neglect on the part of the pursuers, (for it is immaterial which term is used), the defenders, if they could be supposed bound by the form of the transaction, would sustain a damage precisely equal to the sum in dispute; and though they were held liable on one ground, still they would be entitled to relief upon another. If it could be shown, which never can be done, that James Dunlop had both the power and intention to bind them, still the *culpa* of the pursuers, occasioning a damage equal to the sum claimed, would afford a relevant exception or defence.

That the concealment or neglect to give notice did occasion a damage to this extent there can be no doubt. If the defenders had got the least notice of such a transaction, they would have put a stop to it at once, and consequently no such loss as that in question could have arisen. This infallibly would have been their conduct; both their interest and their credit as a Bank required it. But supposing, for argument's sake, that they had allowed the cash-account to take place, and that they were bound for the balance, they would then have impressed just so much less into the hands of James Dunlop, and, of course, there would have been just so much less due upon the balance of his account-current, which comes just to the same thing. They never would have furnished him with other funds for paying the differences, when they knew they were charged to a cash-account for which they were liable.

The damage and the extent of the damage, therefore, seem indisputable. And that the concealment or neglect on the part of the pursuers,



pursuers, to which it was owing, was so culpable, as justly to make them liable for the damage; that there was, if not an actual *dolus*, at least a *lata culpa qui dolo equiparatur*; the defenders apprehend, no person who attentively considers the circumstances of the case, can doubt.

The pursuers knew, that Mr Dunlop had long been agent for the Greenock Bank; that the agreed mode of paying the differences of exchanges was by bills on Edinburgh, at one day's date; that this mode had been regularly and constantly followed for many years, and ever since the exchanges began; that Mr Dunlop had regularly and punctually paid the differences by bills on Edinburgh, and consequently that the Greenock Bank must have been in use to impress funds into his hands for that purpose. They must have seen, therefore, that by suddenly changing this practice, without giving any notice of the alteration, and allowing the differences upon the exchanges to run up as a debt against the Greenock Bank, in place of being punctually paid every exchange day as they occurred, they would put it in Mr Dunlop's power to apply for his own private purposes the money which he received for paying such differences, and thus the Company might be defrauded to the extent of many thousand pounds, without the possibility of detection or prevention. This was a strong, and ought to have been an irresistible reason for them to give notice to the Greenock Bank, or rather to transact with the Bank itself on such an occasion; at any rate, it should have induced them to desire to see Mr Dunlop's powers to enter into the transaction.

Though this was a strong call upon them to act differently from what they did, it was not the only call. There were many other reasons that must have prompted them to communicate with the Greenock Bank upon the subject, if they had not been wilfully and most unaccountably determined against it. Every one of the following circumstances afforded a separate and strong reason.

The *importance* of the contract; being for an unlimited credit, upon which a debt to any amount might arise, and a debt of many thousand pounds was certainly to arise.

The *new and extraordinary nature* of it, not only in respect of the unlimited credit, but in respect of a cash-account being taken by a Bank, or agent of a Bank for paying the differences upon the Bank's exchanges of notes. No other Bank ever took such a method; and, as the Greenock Bank, by the pursuers own confession, had more credit than most of the country Banks, there was the less reason to believe that they would have recourse to it.

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The *vicinity* of Greenock, from whence an answer to a letter could be had every twelve hours, which made it the more easy, and consequently the more natural to have some communication with the Bank itself upon such an important transaction; and instead of writing six different letters to the cashier of the Royal Bank at Edinburgh, expressing doubts and fears as to the Greenock Bank being bound, one line addressed to the cashier at Greenock would have satisfied him completely, before his first letter could have been in Edinburgh; and besides, there was another partner of the Bank actually residing in Glasgow.

The *doubts* which it appears from his letters Mr Scott Moncrieff had, whether the Greenock Bank would be bound; which doubts, however, could not it seems overcome his repugnance to apply to the Greenock Bank itself, though it was the only natural and proper method of executing such a transaction, and unquestionably the most obvious and only certain way of removing doubts, whether they were to be bound.

And in fine, the *unprecedented* nature of the transaction was alone an insuperable reason for not entering into it without some communication with the Greenock Bank itself, the supposed principal; it being absolutely without example, that a Bank-agent should take a cash account in his own name from another Bank, upon the credit of the Bank that employed him.

All these considerations, in the defenders humble apprehension, leave the pursuers absolutely without excuse; and their concealment of the transaction, or culpable neglect in not communicating it, must therefore, it is submitted, bar them from making any claim founded upon that transaction.

In support of this plea, the defenders beg leave to refer to a case, decided before Lord Mansfield and a special jury, in December 1774, at Guildhall, and which affords an argument *a fortiori* to the present case. 'The plaintiffs were Hope and Company, of Amsterdam, &c. The point at issue was, Whether, upon the failure of Alexander Fordyce, Henry Neil, William James, and Richard Down, the bankrupts were indebted to the plaintiffs in any or what sum of money. Question, Whether the House of Fordyce was privy to, or bound by a concern of money-circulation transacted between the plaintiffs and Fordyce alone? It was contended, That Fordyce had bound the House to answer for him by a guarantee of the House, (though in the hand-writing, body and signature of Fordyce himself;) That such guarantees were usual: That credit was given



given to them in mercantile circulation, and that the plaintiffs were not called upon to enquire, whether the House pledged were privy to them: That in fact the plaintiffs did rely on the guarantee: That no fraud could be imputed to them, and that in point of law, by virtue of the guarantee, they had a right, upon the failure of Fordyce, to recover the sum due to them from the House. Lord Mansfield explained the force of these guarantees, and laid it down, that they might be and often were infected by covin, *i. e.* by trick between the partner and person with whom he dealt, to cheat the House, by drawing them into a guarantee clandestinely: That such covin would make the guarantee void. He acquitted the plaintiffs from being parties in the covin; but added, that *gross negligence was equivalent* to covin, and that the taking this guarantee in Fordyce's handwriting, without enquiring at the House, was gross negligence, and, for the sake of justice, ought to bar them from the benefit of such guarantee.

Verdict for the defendants.

2. In granting this cash-account, the pursuers did most irregularly depart from the rules constantly observed in granting all other cash-accounts. There was neither previous bond of credit, limitation of sum, nor cautioner; and it is in vain for them now to endeavour to excuse these irregularities, by saying, that it was not a cash-account, but an exchange-account. It is a cash-account by the express terms of Mr Dunlop's letter, offering to take the account, and their letter accepting of it. It is a cash-account by the terms of the orders and receipts upon it; and it is clearly a cash-account in its nature, substance, and effect, there being the same advances of money made upon it, and a large debt arising in the same way as upon other cash-accounts.

When the pursuers come to claim for the balance of a cash-account, said to be granted by an agent, they ought surely at least to be able to show, that this cash-account was regularly granted in the common way. But this they cannot show. The irregularities that have been mentioned are as indisputable as they are extraordinary.

What the defenders chiefly call your Lordships attention to is, that the irregularity is prejudicial to them, and that in various ways. In the *first* place, If a bond of credit had been previously taken, it would probably have limited the sum to L. 3000 or L. 4000, which is considerably higher than the amount of cash-accounts commonly given by Banks.

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But, *2dly*, and which is more material, If a bond of credit had been taken, there never could have been any such question as the present at all. This would have brought on a clear explanation, that the cash-account was to be granted to Mr Dunlop as an individual, and upon his individual credit only; and the matter would thus have been put beyond the reach of doubt or cavil. Mr Dunlop never could have pretended to grant a bond of credit in name and behalf of the Greenock Company; and the absurdity, as well as impropriety of taking such a bond from an agent, in place of the Greenock Banking Company themselves, must have been so glaring, that the pursuers could not have shut their eyes to it. But if the one had been disposed to venture upon, and the others to consent to such an improper deed, the writer, or witnesses, or cautioners who must have been privy to it, might have brought it to the ears of the defenders; a consideration that must have restrained Mr Dunlop from attempting it, as he must have well known that it was a breach of duty which he could not justify. And the cautioners besides would have been desirous to have seen Mr Dunlop's powers for binding the Bank, which would have been an insuperable bar, as he had none to show.

And the pursuers cannot be allowed to avail themselves of their own irregularities; and if it is certain, or even probable, that no such claim would have ever existed, if they had attempted to have executed the transaction regularly, the defenders apprehend it follows by clear consequence, that they cannot be allowed to found any claim against them upon an irregular transaction.

3. The conduct of the pursuers was irregular and improper, in various other respects, and more particularly in proceeding without desiring to see the powers which Mr Dunlop had for entering into the transaction; nay, never so much as enquiring whether he had powers, or whether he had informed the Greenock Bank of the proposed transaction. And Mr Scott Moncrieff's burning the letters or notes he received from Mr Simpson, containing the instructions given him from Edinburgh upon this business, and the only authority he had for granting the cash-account, is another deviation from the ordinary rules of business, which ought justly to have its weight against the pursuers, in a question like the present, where Mr Dunlop and Mr Scott Moncrieff, the two parties between whom the transaction was executed, contradict one another with regard to the true meaning and intendment of it.

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The defenders shall now offer a few observations upon the arguments that have been insisted upon by the pursuers.

Anf. to Arguments for Pursuers.

Much stress has been laid upon Mr Dunlop's letter to Mr Gammill, of the 5th of January 1793, which, it was said, shows that Mr Gammill was informed that some transaction or other had taken place; and although the particulars are not specified, and there is no mention of the cash-account, that it was his duty to have enquired, and by proper enquiry he might have discovered the whole.

The defenders view that letter in a very different light. They consider it as a strong additional proof, that they were kept in total ignorance of the transaction, as they not only are not there informed of any such thing, but are, on the contrary, positively assured by Mr Dunlop, that he had told Mr Scott Moncrieff he never would advise the Greenock Bank to agree to any alteration. The argument which the pursuers endeavour to found upon it, it is apprehended, has been already sufficiently obviated by the observations which the defenders took occasion to make upon that letter, and Mr Gammill's answer of the 7th of January, in stating the correspondence; but as this topic has been a good deal insisted on, they beg leave to observe further,

1<sup>st</sup>, That it is certain, in point of fact, neither this letter, nor any thing else, ever did excite any suspicion of any such transaction having taken place, nor consequently could lead to any enquiry. This is proved to demonstration, by Mr Dunlop's monthly accounts, as well as the series of correspondence with him; for, if there had been even but a suspicion that he was not paying the differences upon the exchanges, as usual, but was placing them to the debit of a cash-account, for which the Bank was answerable, they never could have settled monthly with him as they did, and never would have continued the same extent of funds in his hands.

2<sup>dly</sup>, The terms of the letter could not possibly excite the least suspicion or idea of such a transaction, or of any transaction by which the Greenock Bank could be bound or affected. The defenders shall not repeat what has been already said; but surely, nothing could be better calculated to prevent the possibility of such a suspicion, than those words of the letter: "I told him I could think of none, for I would by no means advise the Greenock Bank to alter the mode of making their exchanges, which had been settled by mutual agreement. And as to the private arrangement, which is mentioned but not explained in the end of the letter, it is explicitly stated to be a thing which concerned

Exhib. p. 21. D.

Mr



Mr Dunlop as an individual only, and with which the Bank had nothing to do; and it is upon this footing, and for this reason, that he does not give the particulars; after which, it must have been deemed a piece of rudeness and an unnecessary prying into Mr Dunlop's private affairs, if Mr Gammill had made any further enquiry; and accordingly, Mr Gammill never had the least thought or inclination of making any such enquiry. Had Mr Dunlop in his letter to Mr Gammill, even mentioned that the Royal Bank had given him a cash-account, which would make his remittances to Edinburgh more easy, by giving him time to look out for bills, Mr Gammill had no right, nor would he have thought of asking any farther about it, for he might as well have enquired into Mr Dunlop's accounts with every correspondent he had, as into that of the Royal Bank. The very name of a cash-account implies the credit fixed, bond granted with sufficient cautioners, and every thing carried on in the ordinary course of business. Mr Gammill never had an idea that Mr Dunlop had any kind of account with the Royal Bank, or any other Company, for which the Greenock Bank was in any degree bound.

3dly, It was impossible to suspect that Mr Dunlop, who had no powers to bind the Greenock Bank, would attempt to do so, or that the cashiers of the Royal Bank, who were men of experience in business, would ever think of entering into any contract or agreement with one who had no powers. And as to the transaction of the cash-account being that which actually took place, it was beyond the reach of the wildest imagination, especially, if understood, as the Royal Bank now wish to do; Mr Gammill never could have supposed that the cashiers of the Royal Bank would attempt to act so improperly, in a manner so contrary to all the rules of men of business, as to give a cash-account to any agent of a Company, on that Company's account, without first advising with them on the terms thereof, and the extent of the credit, and getting the Company's consent and their bond and obligation for the amount.

It is thus perfectly evident, that the defenders neither had a suspicion, nor any ground for a suspicion, that any such transaction had taken place; and consequently there is not the least foundation for alleging, that they might or ought to have enquired. And it is therefore hardly necessary to add, that the pursuers argument would be equally extraordinary and irrelevant, though there had been more ground for suspecting this concealed transaction than there was. Their argument amounts to this: 'We entered into an agreement, which we now wish should be binding on you. We made it, however, with one who had no powers;



‘ powers ; but we never said a word to yourselves on the subject, though we had the opportunity every day ; but you might have suspected and enquired, and you did not ; and this ought to subject you.’ But, with great submission, upon what medium ? Will the defenders, not suspecting what was concealed from them, and of course not enquiring, ever supply the want of powers in Mr Dunlop ? or can it possibly justify or excuse the extraordinary conduct of the pursuers in making such a transaction, without treating with the principal parties concerned, or giving them any intimation of what was going on ? which if they had done, as they were bound to do, the defenders would have had certain knowledge, and would not have been left to suspicion and enquiry. And the pursuers argument is the more ungracious, as well as groundless, as there is too much room to believe, that they shunned any communication with the Greenock Bank upon the subject, because they had reason to think, as every man of common sense must have thought, that the Greenock Bank never would agree to any such transaction.

A pretty singular attempt was made on the part of the pursuers to found upon what they themselves had said, or wished to say when called as havers as evidence of facts. In their additional memorial, after quoting that part of Mr Simpson’s deposition, where, upon being called upon to produce any order of the Directors for granting this cash-account, he depones, *inter alia*, That there was not ‘ any public order made by the Directors relative to that account, although the deponent communicated Mr Scott Moncrieff’s private letter upon the subject to some of the Directors, and particularly Mr Ramsay, who approved of the measure, by a memorandum, which the deponent did not preserve, it being his practice to destroy all such private memorandums,’ they proceed thus : ‘ Mr Simpson, upon his examination added, that Mr Ramsay, in his memorandum on the subject, mentioned expressly his understanding that the Greenock Bank was bound, and that the account was with them ; but this was opposed being taken down on the part of the defenders. The fact, however, appears from Mr Scott Moncrieff’s deposition, that Mr Simpson had wrote to him agreeable to Mr Ramsay’s written memorandum, namely, ‘ Keeping the Greenock Banking Company bound by that transaction.’

It must occur to your Lordships to be exceedingly irregular for parties, when called as havers, to depone, or attempt to depone

Exhibits,  
p. 36. E.



as witnesses to the contents of writings which they do not produce, and then, in their papers, to appeal to what they so said or would have said, as evidence in their own favour. And the irregularity is the greater, when the papers, the tenor of which they thus attempt to prove, ought to have been in the hands of these parties themselves, but have been destroyed. It is presumed, therefore, that this evidence of the pursuers in their own favour will not be thought entitled to any regard. And, after all, though it were to be admitted to its full extent, it proves nothing that is in the smallest degree material, or rather, when accurately considered, it proves against the pursuers, as there has been occasion, to observe in remarking upon Mr Scott Moncrieff's deposition. Supposing Mr Ramsay or Mr Simpson to have wished or meant the Greenock Bank to be bound for the cash-account, What then? Surely they would not be a bit more bound for that reason, if the transaction, in fact, never was communicated to them, nor any measure ever taken that could possibly bind or affect them. But farther, if Mr Ramsay or Mr Simpson, after seeing Mr Dunlop's letter proposing to take a cash-account, did, in fact, express a wish that the Greenock Bank should be kept bound; and if, as Mr Scott Moncrieff says, 'Mr Simpson expressed his approbation of an account being opened with Mr Dunlop, as agent for the Greenock Bank Company, for the exchange of their notes, in terms of Mr Dunlop's letter produced in process, keeping the Greenock Banking Company bound by that transaction.' This would import, that they understood the letter itself not to be sufficient for that purpose, but that something more was to be done, which, however, never was done.

The pursuers have endeavoured to draw some aid to their action from the circumstance of Mr Dunlop's being a partner, and a great deal was said of his name being first in the firm, &c. But it has already been shown, that his being a partner can have no sort of influence on the present question; and whether his name was first or last in the firm, or not in the firm at all, is perfectly insignificant.

The case was put of L. 20,000 or L. 30,000 in Greenock notes being presented at once to Mr Gammill, Mr Dunlop, or any of the other individual partners at Glasgow or Edinburgh, and payment required; and it was said, that as they could not be prepared with cash to such an amount, they must have granted an obligation for the sum, and that this obligation would be binding on



on the Bank; and from thence it was inferred, that Mr Dunlop might bind the Bank by an obligation in the way of taking a cash-account.

But this case, which the pursuers were pleased to put, is a very unfortunate one. In the *first* place, It proceeds upon a palpable mistake, and supposes what could not happen, it being well known that Greenock notes, like all other bank-notes, are only payable at the Bank-office, and consequently payment could only be demanded at the office in Greenock; and no such demand as is here supposed could be made upon individual partners at Glasgow, Edinburgh, or any other place. It is supposed the individual partners, or even the Directors of the Royal Bank, will not easily admit that they might be called upon at any place in Britain for payment of their notes; and if it were material, the defenders can easily prove, that the cashiers of the Royal Bank, at their office in Glasgow, have refused to pay their notes there, and to give either gold or silver, or even London bills for them.

In the *next* place, Taking the case as put, it proves nothing. If any person did give up a parcel of bank-notes to an individual partner, upon getting that partner's private obligation, he would have no other debtor but the individual partner who became possessed of the bank-notes, and might dispose of them as he thought proper. And the case, besides, has no resemblance to the present, which is that of an agent who has ready money put into his hands by a Bank, for the purpose of taking up a certain parcel or parcels of their notes; and in place of employing it in that way, he applies the money otherwise, and the holder of the notes, in consideration of a premium, gives them up to him upon his own private obligation, or for a draught upon his cash-account.

The pursuers have likewise said a great deal of Mr Dunlop's extensive powers as agent. But it has already been fully shown, that both his powers and sphere of acting as agent, were in fact much more limited than those of most Bank-agents are, and that he never had in any way the power of borrowing a fixpence upon the credit of the Bank. It has likewise been observed, that no Bank-agent ever had or pretended to exercise the power of taking a cash-account to himself, so as to bind the Bank who employed him, for his operations upon it.

It was said that Mr Dunlop, as agent for making the exchanges with the Royal Bank, had power to settle these exchanges in what manner he thought proper; and that this implied, that he might either give value for the differences immediately, or grant obligations,



obligations, obliging the Bank to pay for them afterwards; and that, therefore, he might allow them to run up in the way of charges upon a cash-account. This would have been a very dangerous power indeed; for, in this way, a Bank and all its partners might be ruined before they knew any thing of the matter. And why would they both put ready money funds into the hands of their agent, and give him power at the same time to take up their notes upon credit?

By the letter of the 28th July 1785, addressed to the cashiers of the Royal Bank, his powers and transactions with them are expressly limited to the simple act of exchanging, or to giving present value against present value. And the answer of the Royal Bank, of the 1st of August, which concluded the agreement about these exchanges, fixed the value to be given for the differences upon these exchanges, to be bills, at one day's date, on Edinburgh, which rule was constantly followed till this strange transaction in January 1793.

Additional Memorial for the Royal Bank,  
p. 53.

When the pursuers therefore admit, as they do in one passage of their additional memorial, that had Mr Dunlop's power of agency, in exchanging the notes, been limited to one mode, there might have been room for arguing that he could not depart from it, they, in effect, give up their cause; for this is precisely the real fact.

It has been much insisted on, that all the articles to the debit of the cash-account, are Greenock Bank notes delivered. And it has been asked, Can the Greenock Bank refuse to pay for their own notes delivered to their own agent? But the answers are obvious. The Greenock Bank, in fact, paid for their own notes, which were delivered, because they furnished Mr Dunlop with money to pay for them. And when the Royal Bank departed from the mode settled and agreed with the Greenock Bank, of taking bills on Edinburgh, at one day's date, and took in place of them the private obligations of Mr Dunlop, in the form of orders upon a cash-account, or otherwise, they did so entirely at their own risk. And there is no more ground for making the Greenock Bank liable, because he received Greenock notes for his obligation, than there could have been to make the Bank liable for a bond of borrowed money, granted by Mr Dunlop, because the creditor happened to pay down the sum lent in Greenock Bank notes. The defenders need hardly add, that there is no evidence that all, or indeed any part of the sum stated to the debit of the cash-account, was paid in Greenock notes.

It



It has been said, that if there had been a balance in favour of Mr. Dunlop upon this cash-account, the Greenock Bank would have been entitled to claim it; and that if this is the case, a plain man will not easily understand, why, on the other hand, they should not be liable for the balance. But the answer to this is obvious, and indeed twofold: 1<sup>st</sup>, That the account being a private cash-account of Mr Dunlop's, the Bank would have had no title to claim the balance, if it had stood in his favour; and, 2<sup>dly</sup>, Though it has been found in certain cases, where a trustee or agent has lodged his constituent's money in a banking-house, tho' in his own name, that the constituent may have right to it, it never has been found, nor will it follow by any principle of law or reason, that the agent could bind his constituent by taking up money upon a bond or promissory note, or obtaining a cash-account without any power to do so.

In fine, the pursuers have argued, that the paying of the differences of the exchanges by Mr Dunlop's draught, at one day's date, upon Sir William Forbes and Company, implied an exuberant confidence of the Greenock Bank in Mr Dunlop; and that as they were answerable for these bills, if returned dishonoured, they ran a risk of being brought in for as great a sum as is now claimed upon the cash-account.

But this is partly erroneous in point of argument, and partly a mistake in point of fact. The defenders, by their agreement with the pursuers, were to pay the differences in exchanging notes by bills on Edinburgh, at one day's date. They trusted Mr Dunlop with their funds to purchase such bills; and it was no matter to them whether he gave bills of his own on Sir William Forbes and Company, or bought good bills, at one day's date, from any other person. But their trusting him with their funds to do this, is so far from implying a power to bind them in any obligation, that it implies just the contrary; for as they furnished him with ready funds, they neither did nor had any occasion to give him power to bind them in any obligation whatever. Mr Dunlop paid for the differences by bills on Sir William Forbes and Company, his own private bankers, and he informed these gentlemen, that by the mode he had of making remittances to answer his draughts on them, he gained to himself some days interest.

Had Mr Dunlop not made punctual payment of the difference upon the exchange of the Greenock Bank-notes for a single day, it was the duty of the Royal Bank cashiers to have immediately

T

advised.



advised the Greenock Bank Company thereof, who would instantly have taken up their notes from the Royal Bank, and would have taken effectual means to prevent any thing of the like kind happening thereafter, as, without the smallest boast, the Greenock Banking Company can say their situation in money-matters was always perfectly easy, for which they might refer to their bankers in London and Edinburgh. But, indeed, there cannot be a stronger proof, than the events of spring 1793, after Mr Dunlop's failure, which have been already taken notice of.

If one of these bills, at one day's date, had come back dishonoured, after being duly negotiated, (and there never could be more than one in this situation), and both drawer and acceptor had failed, the defenders might be bound to make it good. But the risk here was very small, or next to nothing, for the bill being accepted by Sir William Forbes and Company the very next day after it was drawn, the defenders could run no risk, unless not only the drawer, but that respectable House also had failed within four days. And accordingly, as bills at one day's date still continued to be given after January 1793, as well as before, so, as has been above mentioned, a bill at one day's date being given on the 19th of March, the last day that Mr Dunlop made any exchange, it was accepted by Sir William Forbes and Company, and it was duly paid on the 23d, when it fell due, being the very day when Mr Dunlop's estate was sequestrated. It is clear, therefore, that if there had been no cash-account, but the regular method of giving bills at one day's date had been followed, there could have been no claim against the defenders. And nothing can be more palpably groundless than the pursuers allegation, that the arrangement of 1st January 1793, did not give more power to Mr Dunlop, or expose the defenders to more risk, than the arrangements in 1785 and 1789.

The defenders cannot conclude, without taking some notice of the complaints which Mr Scott Moncrieff makes in his letters to Mr Simpson, that the Greenock Bank had great advantages according to the settled plan of exchanging twice a-week, and paying the differences in bills on Edinburgh, at one day's date, especially considering the great number of their notes that came into their office at Glasgow; which topic has also been a good deal insisted upon by the pursuers in the course of the present cause, though in reality, entirely foreign to the merits of it.

And,



And, in the first place, supposing there had been any such advantage, still when there was a clear settled agreement regulating the matter, what title could the Royal Bank, or Mr Scott Moncrieff have to complain, while this agreement was duly performed? They seem to have forgot, too, all the acknowledgments and professions of regard, which were so liberally made to the Greenock Bank in spring 1789, when they agreed to exchange twice a-week in Edinburgh, which the Glasgow Banks refused. But if they were for a new agreement, why not propose it to the Greenock Bank itself, with whom the original agreement had been made? and if any good reason for it could have been shewn, it might have been consented to, but otherwise, it must have been rejected; which last would certainly have been the case, as the Greenock Bank were fully satisfied, that the Royal Bank had more than enough of advantage, by the agreed method of exchanging at Edinburgh and Glasgow as settled.

Exhibits,  
p. 3. E. &  
p. 6. E.  
& F.

But if there had been to be any new mode adopted, it certainly never would have been in the way of a cash-account, which gives such an uncontrouled power to an agent, and by which the Bank would be made to borrow money at 5 *per cent.* at a time (in January 1793,) when they had more money in their hands, at 4 *per cent.* than they could well apply to advantage. They would rather have lodged money upon a 4 *per cent.* or deposit account. But neither that, nor any other alteration was agreed to. The Greenock Bank had no advantage in the exchanges with the Royal Bank; and, on the contrary, the Royal Bank exchanged with the Greenock Bank on a more advantageous footing than with other Banks, and the Greenock Bank was subjected to considerable loss and inconvenience by the exchanges with the Royal Bank.

While the pursuers speak of the exchanges at Glasgow, they forget or keep out of sight altogether the exchanges at Edinburgh, where the Greenock Bank exchanged with them *twice* a-week, while the Glasgow Banks exchanged, and to this day do exchange but *once* a-week, by which they had a very considerable advantage in exchanging with the Greenock Bank which they had not with other Banks. The defenders have printed in the appendix, an account of the exchanges at Edinburgh, from the 1st of January 1792 to the 21st of March 1793; and from this account it must appear very clear, what great gainers the Royal Bank were in point of interest, by the notes of the Greenock Bank



Bank being punctually retired from them twice a-week in Edinburgh.

If the Greenock Bank had entered into no agreement with the Royal Bank for making exchanges, but left the Royal Bank to have sent the Greenock notes from Edinburgh and Glasgow to the Bank of Greenock, where only their notes were payable; it is obvious what loss of time and interest, and what great expence and risk the Royal Bank would thereby have run. The Greenock Bank, would in that case have been great gainers in many respects, and the Royal Bank had it in their power to have tried the experiment if they pleased. They likewise, no doubt, had it in their power to have refused the Greenock notes, and this they tried for a few weeks in spring 1793, for a particular purpose; but when they found that that purpose could not be accomplished, they soon returned to their former practice.

As to the number of Greenock Bank notes coming into the Royal Bank office at Glasgow, this was a very great loss to the Greenock Bank, as it is a great loss to any Bank to have their notes taken quickly out of the circle. The defenders have much reason to complain of the management of the Royal Bank, by which this was effected, and they must here explain to your Lordships what it was, as the Royal Bank when they complain of the number of the Greenock notes coming in upon them, take care to say nothing upon this point.

Exhibits,  
p. 7. G.

When all the other Banks in Glasgow were drawing on Edinburgh at 3 and 4 days date, the cashiers of the Royal Bank there, thought proper to give bills on Edinburgh at sight, for Greenock notes and other country notes: This was inviting all persons who held Greenock notes to put them out of circulation, by carrying them to the Royal Bank office at Glasgow, for bills on Edinburgh at sight; and it no doubt had the effect, which was what the Royal Bank intended, to the great loss of the Greenock Bank. It is strange therefore that they should complain of what was the direct effect of their own management, which they themselves foresaw; and the Greenock Bank, who were the real sufferers, had certainly the best reason to complain. Their agreement with the Greenock Bank to pay the balance of exchanges by bills on Edinburgh, at one day's date, was settled by themselves, and had they drawn on Edinburgh at four days date par, as the other Banks in Glasgow were then doing, and which the defenders are informed



informed the Royal Bank themselves are now doing, they would have had but few Greenock notes in proportion, and they would have been gainers by receiving bills on Edinburgh for the balance of exchanges at one day's date, and selling their own bills on Edinburgh, as other Banks did, at four days date.

There was, therefore, no advantage to the Greenock Bank, or disadvantage to the Royal Bank by the mode of exchanging as settled and practised before the 1st of January 1793, but rather the contrary.

But though the pursuers have been pleased to argue upon this topic, it is, in reality, as already said, quite foreign to the cause. Whether the settled mode of exchanging was more or less advantageous for one Bank or another, still, there can be no pretence for claiming from them the balance of a cash-account, with which they had no concern, and from which they derived no benefit, the taking of which they never authorised, and the very existence of which was unknown to them: And, on all the different grounds which have been stated, they humbly submit, that a worse founded claim than the present has seldom appeared in a court of justice.

*In respect whereof, &c.*

M A T. R O S S.

A P P E N-



informed the Royal Bank themselves are now doing they would  
have had but few Greenock notes in proportion, and they  
would have been anxious to receive bills on Edinburgh for the  
balance of exchange at one day's date, and selling their own bills  
on Edinburgh at other banks at four days date.  
There was therefore no advantage to the Greenock Bank, or  
disadvantage to the Royal Bank by the mode of exchanging as  
settled and practised before the 1st of January 1793, but rather  
the contrary.  
But though the parties have been pleased to argue upon  
this topic, it is in reality as already said, quite foreign to the  
cause. Whether the settled mode of exchanging was more  
or less advantageous for one bank or another, still, either can  
be no ground for clearing from them the balance of a cash  
account, with which they had no concern, and from which  
they derived no benefit, the taking of which they never autho-  
rised, and thereby evidence of want of wisdom to them.  
And, on all the different grounds which have been stated, they  
highly submit that a more founded objection than the present has  
before appeared in a court of justice.

In reply, Mr. J. C.

M. A. T. R. O. S.

A P P E A R



# A P P E N D I X.

EXCERPTS OF LETTERS between Mr Dunlop and Mr Gammill, from 18th December 1792 to 17th March 1793; which, with the Excerpts printed among the Exhibits, complete the whole Passages in their Correspondence, from 1st December 1792 to 21st March 1793, where any mention is made of the Royal Bank or their Cashiers.

## No. I.

EXCERPT Mr Dunlop to Mr Gammill.

(Part printed in Exhibits, and part not.)

18th December 1792.

Our exchange to-day is L. 3603; but I suspect we shall have a heavy one somewhere the ensuing week, as a considerable number of the notes which the Royal Bank had on Saturday did not come against us to-day.

## No. II.

B.

Mr Gammill to Mr Dunlop.

(No part of this printed in the Exhibits.)

24th December 1792.

Our exchange at Edinburgh on Friday was L. 4747,—the Royal C Bank had L. 3681.

No. III.



No. III.

Mr Dunlop to Mr Gammill.

*(Part printed in Exhibits, and part not.)*

8th January 1793.

A Our exchange to-day is L. 4158. I observe a great many Bank of Scotland's notes in the remittance of last night, from which I conjecture their branch has begun business. Are they to send what notes they get of ours to Edinburgh? I trust, from the arrangement with Mr Scott Moncrieff, fewer of our notes will go B there than formerly.

No. IV.

C Ditto to Ditto.

*(Part printed in Exhibits, part not.)*

15th January 1793.

D Our exchange to-day is L. 4687. I observe it was pretty high at Edinburgh, although I am sure fewer notes went from this than usual, as indeed the exchange shows; and none (of our notes) I E am certain went from the Royal Bank (to Edinburgh).

No. V.

F Ditto to Ditto.

*(No part of this printed in Exhibits.)*

5th February 1793.

G I did not ask Sir William Forbes and Company what our exchange was on Friday, which I see has been high; they only in general



general complained of the great number of our small notes which A  
came to themselves from Mr Carrick, and to the Royal Bank  
from Kinnear, which I heartily wish we could fall upon some  
method to remedy. I had no notion the exchange would have  
been so high at Edinburgh on Friday, or here to-day L. 5512.  
This must arise from transactions at Greenock, which you proba- B  
bly can account for.

## No. VI.

Ditto to Ditto. C

*(Part printed in Exhibits, part not.)*

12th February 1793.

Our exchange to-day is L. 5013, which surprises me, as the D  
Royal Bank had but few on Saturday, and no large notes, of  
which they have L. 1400 to-day.

## No. VII. E

Ditto to Ditto.

*(Not printed in Exhibits.)*

17th March 1793. F

Both the Royal and Thistle Banks have had large sums of four  
per cent. money paid into them within these eight days; where it  
is come from I do not know.



**ACCOUNT of EXCHANGE of Greenock Notes made upon the**  
**Tuesdays weekly, with the Royal Bank at Glasgow, by Mr James**  
**Dunlop, on account of Dunlop, Houston, Gammill and Company,**  
 from the 1st January to the 19th March 1793, as advised by  
 him.

**Date of**  
**Exchange.** **Amount.**

		L.	s.	d.
Jan.	8.	2524	6	0
	15.	2344	13	0
	22.	2384	16	0
	29.	2145	10	0
Feb.	5.	3636	7	0
	12.	2731	2	0
	19.	*	0	0
	26.	2394	16	0
March	5.	2269	18	0
	12.	922	13	0
	19.	1484	17	0
		<hr/>		

**ACCOUNT**

\* The amount of this day's exchange not advised, particularly, but *in*  
*cumulo* with the exchanges with the other Banks.



ACCOUNT of EXCHANGE of Greenock Notes made twice a week at Edinburgh by *Sir William Forbes and Company*, with the Royal Bank there, on account of *Dunlop, Houstoun, Gammill and Company*, Greenock, from 1st January 1792 to the 22d March 1793.

Date of Exchange.	Amount.	Date of Exchange.	Amount.
	L. s. d.		L. s. d.
1792.		1792.	
Jan. 3.	83 0 0	April 23.	220 0 0
6.	1399 0 0	27.	2618 0 0
9.	351 0 0	30.	63 0 0
13.	1611 0 0	May 4.	1468 0 0
16.	152 0 0	7.	617 0 0
20.	1286 0 0	11.	1749 0 0
23.	172 0 0	14.	78 0 0
27.	4719 0 0	18.	4320 0 0
31.	325 0 0	21.	231 0 9
Feb. 3.	2718 0 0	25.	2350 0 0
6.	125 0 0	28.	84 0 0
10.	2628 0 0	June 1.	2568 0 0
13.	131 0 0	5.	267 0 0
17.	1584 0 0	8.	1066 0 0
20.	168 0 0	11.	188 0 0
24.	1391 0 0	15.	2286 0 0
27.	126 0 0	18.	147 0 0
March 2.	3965 0 0	22.	1681 0 0
5.	83 0 0	25.	68 0 0
9.	1748 0 0	29.	1373 0 0
12.	147 0 0	July 2.	89 0 0
16.	1259 0 0	6.	2189 0 0
19.	919 0 0	9.	172 0 0
23.	2946 0 0	13.	1105 0 0
26.	155 0 0	16.	126 0 0
30.	4275 0 0	20.	1194 0 0
April 2.	94 0 0	23.	89 0 0
9.	3532 0 0	27.	501 0 0
13.	3023 0 0	30.	139 0 0
16.	126 0 0	August 3.	2080 0 0
20.	1392 0 0		
Card. forwd.		Card. forwd.	



ACCOUNT of EXCHANGE with the Royal Bank, made at Edinburgh by *Sir William Forbes and Company*, for *Dunlop, Houston, Gammill and Company*, continued.

Date of Exchange.	Amount.	Date of Exchange.	Amount.
1792.	L. s. d.	1792.	L. s. d.
Augst 6.	Br <sup>t</sup> . forwd.	Nov. 30.	Br <sup>t</sup> . forwd.
10.	47 0 0	Dec. 3.	4476 0 0
14.	798 0 0	7.	52 0 0
17.	172 0 0	10.	2642 0 0
20.	896 0 0	14.	167 0 0
24.	84 0 0	17.	2264 0 0
27.	1348 0 0	21.	89 0 0
31.	131 0 0	24.	3681 0 0
Sept. 3.	1519 0 0	28.	63 0 0
7.	84 0 0	31.	183 0 0
10.	2147 0 0		168 0 0
14.	241 0 0	1793.	
17.	1367 0 0	Jan. 4.	2735 0 0
21.	130 0 0	7.	177 0 0
24.	2045 0 0	11.	2810 0 0
28.	83 0 0	14.	792 0 0
Oct. 1.	2191 0 0	21.	1894 0 0
5.	245 0 0	25.	1519 0 0
8.	2437 0 0	28.	265 0 0
12.	89 0 0	Feb. 1.	2711 0 0
15.	1206 0 0	4.	255 0 0
19.	181 0 0	8.	1411 0 0
22.	4107 0 0	11.	110 0 0
26.	84 0 0	15.	2651 0 0
29.	1910 0 0	18.	1003 0 0
Nov. 2.	303 0 0	22.	2107 0 0
6.	1366 0 0	25.	445 0 0
9.	428 0 0	March 1.	1817 0 0
12.	2448 0 0	4.	152 0 0
16.	241 0 0	8.	3124 0 0
19.	2971 0 0	11.	556 0 0
23.	281 0 0	15.	3136 0 0
26.	3201 0 0	18.	703 0 0
	135 0 0	22.	574 0 0
	Card. forwd.		153407 0 0